CUSTOM AND LAW

IN

ANGLO-MUSLIM JURISPRUDENCE

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Anglo-Muslim Jurisprudence

BASED ON THE THESIS—"DEVIATIONS FROM THE ANGLO-MUSLIM LAW WITH REFERENCE TO THE MOPLAS OF MALABAR—" APPROVED FOR THE DEGREE OF DOCTOR OF LAWS IN THE UNIVERSITY OF LONDON

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THACKER, SPINK & Co. (1933) LTD.

CALCUTTA

1938

PRINTED FOR THE AUTHOR
BY THE LIBERTY PRESS, MADRAS,

AND PUBLISHED BY
THACKER, SPINK & Co. (1933) LTD., CALCUTTA.
FEBRUARY 1938.

To

The Honourable

SIR ALFRED HENRY LIONEL LEACH, Kt.,

BARRISTER-AT-LAW,

Chief Justice, High Court of Judicature, Madras,

This book

is,

By kind permission,

Respectfully dedicated.

"These Arabs, the Man Mahomet, and that one century,—is it not as if a spark had fallen, one spark, on a world of what seemed black unnoticeable sand; but lo, the sand proves explosive powder, blazes heaven-high from Delhi to Grenada!"

—*Thomas Carlyle.*

PREFACE.

The works on the Customary Law of the Muslims in India are too few in number to require an apology for the publication of this book. In writing about the Moplas who, it may be said, are the only people in India who have retained to a large extent their pre-Islamic customs in preference to the laws of their religion, I have endeavoured to formulate how customary law is the product of the geographical and other conditions of the country. For this purpose, I have referred in detail (even at the risk of repetition) to the historical and social conditions prevailing in Malabar from early times and the customs created by these conditions continued to be observed by the Moplas even after their conversion to Islam. I have also considered at length the customary law followed by them firstly, because in many respects it is unique, and secondly, in order to point out how closely their customs and usages are connected with the circumstances of their daily life. Further I have attempted to postulate a theory with reference to the Melkkoyma right of the ancient Malabar Rajahs in Mopla religious endowments which, although of some importance in Malabar Law, has received but little consideration hitherto.

I should like to add that in this publication I have developed and re-arranged the thesis that was approved by the University of London for my LL. D. Degree in the year 1930.

In recording my indebtedness I must first thank my various correspondents for readily supplying me the information I was in need of, *viz.*, Sir T. W. Arnold (London University); Count Leon Ostrorog (London University); Professor D. S. Margoliouth (Oxford University); and Professor R. A. Nicholson (Cambridge University). I must also thank Dr. C. O. Blagden, Professor of Malay (London University) for giving me references to Malay subjects; Mr. S. V. Fitzgerald, M.A., (Oxon) I.C.S., Barrister-at-Law, author of Muhammadan Law, for valuable criticism; the late Sir P. Rajagopalachari, Kt., K.C.S.I., C.I.E., Member of the Council of the Secretary of State for India; Mr. A. Yusuf Ali, I.C.S. (retd.), C.B.E., M.A., LL.M., (Cantab) F.R.S.L., Barrister-at-Law, joint author of Anglo-Muhammadan Law; Sir John Woodroffe, Kt., (Oxford University) and the Right Honourable Syed Ameer Ali, P. C.

My indebtedness to Mr. A. Sabonadiere, I.C.S., (retd.) Ex-Reader in Indian Law in the University of London, for the kind interest he

took in my work while I was at London cannot adequately be described.

In India, my thanks are due to Mr. F. B. Tyabji, Barrister-at-Law, Ex-Judge, High Court, Bombay, author of the Principles of Muhammadan Law; to Sir C.V. Anantakrishna Aiyar, Kt., B.A., B.L., Ex-judge, High Court, Madras; to Mr. B. Sitarama Rao, B.A., B.L., Advocate, High Court, Madras, joint author of the Malabar and Aliyasanthana Law; to Mr. B. Pocker, B.A., B.L., Advocate, High Court, Madras and to Mr. C. Jinarajadasa, M.A. (Cantab) for some very valuable suggestions; to Mr. V. C. Moyen, Ex-Dewan to the Ali Rajah of Cannanore; to Valiajarathingal Thangal Khan Sahib Syed Muhammad Bin Mustapha Ayidross Attakoya Valia Thangal of Ponnani; to Mr. Syed Abdul Gaffoor Shah Sahib, B.A., L.T.; to Monsieur D. Zivarattinam, Judge *de paix p. i. a. competence etendue*, French Mahe; to Mr. T. M. Moidoo, M.L.C.; to Mr. Afzal-ul-Ulma Moulvi Abdul Wahab Sahib Bhokhari, M.A., L.T., M.L.A.; to Mr. P. K. Achan, B.A., B.L., Advocate, High Court, Madras, for bringing the case-law up-to-date; to Mr. Aziz Mahomed Ghouse, B.A., B.L., Advocate, High Court, Madras, for preparing the Index; to Mr. K. V. Venkatasubramanya Aiyer, Professor, Law College, Madras and to Mr. S. Govindarajulu, B.A., B.L., LL.B., (Cantab) Barrister-at-Law., Vice-Principal, Law College, Madras, who has 'crowned his many kindnesses' by assisting me with the proofs and to many other kind friends too numerous to mention.

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HAMID ALI.

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ERRATA.

Page		*For*	*Read*
5	Footnote	Abu Muttalib	Abu Talib
38		or	of
,,		theif	their
,,		Moplat	Moplas
39		we	were
40		other	others
41	Footnote	Malaya	Malays

HISTORICAL AND DESCRIPTIVE INTRODUCTION.

I

It is an accepted fact that in Muslim Jurisprudence religion and law, generally speaking, go together. This principle has been universally recognised, in all countries to which Muslim religion and law have spread. The same rule holds good in India where the Muslims approximate to seventy millions, "exceeding one-fifth of its total population and forming somewhat more than one quarter of the entire community of the followers of Islam in the world". Now the object of this thesis is to prove that Muslim religion and law do not always go together, and that the deviations from the general rule of Muslim Law have been as universal as the religion of the Prophet itself. In other words the change of law of the convert to Islam does not necessarily accompany the change of religion. For this purpose let us first establish that customs and customary law are very intimately connected with the growth of a people, and that in fact they form the very means of expression of a society. Hence the customs of one country are liable to differ from those of another, depending as they do for their expression upon various factors. Geography, topography, history, religion, sociology, in short all those elements which go to place a group of people in a particular stage of human evolution, have to be taken into account if one desires to understand the customs of a people. Therefore it is but reasonable to deduce that, however perfect and suitable a law may be to a community which has evolved it, it may not be practicable for such a community to follow the same code of laws to the very letter for all time.

The farther the religion and law of the Koran spread from the land of its birth, the greater the dissimilarity in race, language and customs with which it had to contend. This is what might be expected; for customs and customary law being the very warp and woof of social life, it is impossible to change them at one stroke on conversion to Islam. For this reason when a non-Muslim community became converted to Islam, it did not necessarily change its laws, but might continue to be governed by its native laws and only gradually give them up in favour of some of the rules of Muslim

Law. Nor is it at all possible, as is sometimes alleged, that a people has adopted the Muslim Law *in toto* on conversion to Islam, only to revert in course of time to its old pagan ways. These propositions can be established with reference to Arabia and to the communities in the Muslim world in India and elsewhere; but this thesis has special reference to the Moplas of North Malabar. These latter represent a unique type among the followers of Muhammad. They are devoted champions of the religion of the Koran, but at the same time, however paradoxical it may seem, cavillers might well class them among the greatest sinners against the legal maxims of the Koran.

Arabia Before the Prophet Muhammad.

Arabia is the birthplace of the Prophet Muhammad. "Sandy and rocky, almost without rivers or lakes, except in favoured regions, with a great part entirely unknown, save, perhaps, to a few lonely wanderers or enthusiastic travellers, who have ventured to explore its barren wastes, this land was, at the time of which we write, strange to all the world". (1) The people of Arabia were divided, into two principal groups: (1) the city dwellers and (2) the Bedouins who were the wanderers, the 'mysterious sons of the desert'. The Arabs led a life of primitive simplicity; their wealth chiefly consisted in sheep, cattle, horses, camels, and slaves, and they roamed about the desert in search of pasture for their flocks. They occasionally supplemented their wealth by raiding a neighbouring town or pillaging a helpless caravan as opportunity occurred(2). In short, the Bedouins had hardly evolved beyond the savage or the Nomadic stage.(3) They were divided into tribes, clans, and families, and the head of the tribe was their chief to whom, however, they owed but a lukewarm allegiance. There existed among them no administration of justice

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(1) Recent research has brought to light the fact that Arabia was at one time (in some prehistoric time after the last glacial period) very prosperous and had a highly developed civilisation. Further, that in the centuries following the Christian era to the time of Muhammad, the civilisation that prevailed in Arabia represents a state of community once prosperous and highly civilised, but the period with which we are concerned here represents the days of its decline and fall. See *The Law of Inheritance* by Russell and Suhrawardy, p.p. 6-10.

(2) See "The Saracens" by Gilman, pp. 1 and 2.

The Spirit of Islam p. 58 by Ameer Ali.

See also Selections from the Records of the Bombay Government, No. CCXII, New Series, Hadramaut and the Arab Colonies in the Indian Archipelago, by L.W.C. Van Den Berg.

(3) The short sketch of Arab Society outlined above is in the main true of pre-Islamic times as it is of to-day.

worthy of the name. They had certain customs which they respected no more than the authority of their chiefs; self-interest or a consciousness of their weakness was their sole guide.

The City Dwellers in Arabia.

The cities and towns of Arabia were centres of religious worship and trade. Society there also was organised on a tribal basis, the family being the unit. The machinery of Government and administration of justice, however rudimentary it may have been, was in the hands of a tribal aristocracy, at least in some of the places like Mecca.

Their religion was idol worship; retributive justice and tribal warfare were the order of the day, and infanticide was common. In a word Arabia in pre-Islamic times, especially about the time with which we are particularly concerned, presented the spectacle of a country of vast deserts, peopled by bands of wandering Arabs hardly able to sustain themselves in the land of their birth, a land with little government and less law and with social institutions scarcely advanced beyond barbarism.

The Advent of the Prophet Muhammad.

This was the state of affairs in Arabia until the advent of the Prophet of Islam. It is sufficient here to state that he effected many beneficial changes in the Arab society of his day which resulted in unifying into a nation the miscellaneous tribes then inhabiting Arabia. He left behind him the Koran and Hadis as a guide to posterity. After his death the Caliphs and his companions who succeeded him were engaged in collecting all the materials that were left in the field of law and religion by him. Between the eighth and fourteenth centuries of the Christian era, Muslim Law was for the first time systematised and codified in a scientific manner by the four imams or leaders of the Sunni Schools—Abu-Hanifa, Malik, Shafei, and Hanbal and by their immediate successors who grouped themselves under the four schools founded by the masters. The Muslim Law has ever since been practically stereotyped for all time.

Let us now consider, first of all analytically, the element of custom and customary law in Muslim jurisprudence, and then discuss its adaptability to the land of its origin.

The Sources of Muslim Law.

The chief sources of Muslim Law are: (1) the Koran (2) the Hadis, or the sayings of the Prophet, and the course of conduct pursued by him during his lifetime, (3) Ijma, or consensus

of opinion among the first four Caliphs or the Mujtahids or jurists, (4) Qiyas, or analogical deduction. Among these the Koran and the Hadis rank formost in importance. (1) They are the mainsprings of the Muslim Law, hence let us examine in some detail the elements comprised in them.

THE KORAN.

First as to the Koran, there is, comparatively speaking, very little of Muslim Law as such in the Holy Book. In the words of Wilson : " The Suras delivered (certainly or possibly) at Medina, we find their number to be at most twenty-seven out of a total of 114, making up in actual bulk between a third and a fourth of the whole. Even of these, most are entirely, and all chiefly, occupied with non-legal matter, hortatory, theological, or merely personal; but it is possible to cull from different chapters some eighty or ninety verses, constituting about 1/50th of the entire Koran, which lay down something like a general rule on matters which might come before a civil or criminal court of justice. Even these are very largely open to the observation that the sanction put in the foreground is the religious one." (2) Out of this meagre collection of law in the Koran it will be found that very little is left, if all that does not appertain to the present subject is deducted. In fact, except as to the laws of marriage and inheritance, very little help can be obtained from the Koran as a legal text book properly so called. Only five verses deal with the subject of inheritance.

On examination of these verses it will be found that the Koran mentions only the following heirs: (1) sons, (2) daughters, (3) the father, (4) the mother, (5) brothers and sisters german, (6) brothers and sisters uterine, (7) the widow, (8) the widower. But, it will be observed, that there are other heirs whose right to inherit is unquestionable, e.g., (1) grandsons, (2) grandfather, (3) uncles, (4) nephews, (5) cousins, (6) grandmothers. These, it must be noted, are expressly recognised in the Hadis and Ijma.(3) Again it is said that pre-Islamic law counted among the heirs of a deceased man only the following: (1) agnate male descendants—sons, sons' sons etc.' (2) other agnatic kinsmen indiscriminately.(4) From this it is evident that some of the heirs who were entitled to inherit before the Islamic system are also the heirs under the Muslim Law although they are not

(1) Abdur Rahim, Muhammadan Jurisprudence, pp. 69 and 70.

(2) See Introduction to the *Study of Anglo-Muhammadan Law*, Wilson, pp. 15 and 16.

(3) Russell. *The Law of Inheritance*, pp. 147-148.

(4) " " p. 96.

so mentioned expressly in the Koran.(1) Hence the importance of the rule that the Koran is a code of laws which has to be read in conjunction with the customs of Arabia then in vogue. The legal portion of the Koran in this respect is more like an amending statute than a Code.(2)

The Hadis.

Next in importance to the Koran are the Hadis which are the practices originated by the Prophet Muhammad by his word or deed; these also comprise, be it noted, all those rules of customary law of his time of which he tacitly approved. The importance of the Hadis, or the precepts of the Prophet, can be realised from the fact that more than one school of Muslim Law have Hadis as their basis as, for instance the Maliki school, in which the customs of Madina play a large part.(3) As an illustration of the proposition the Hadis contain to a great extent the customary law of pre Islamic Arabia, let us take the rule in the Muslim Law that the child of a predeceased son has no right of inheritance. Before the Prophet this rule was in existence as part of the Customary Law of the country. In fact the Prophet himself was a victim to it.(4) Neither the Koran nor the Hadis abrogated it and hence as the Prophet himself approved of it it passed into law. We shall presently discuss how intimately these rules of law are connected with life in Arabia in the days of the Prophet, but before doing so let us consider for a moment and in a general way the part played by pre-Islamic customs in moulding the Muslim Law of to-day.

Customary Law in Pre-Islamic Arabia.

For this purpose let us start with the law of marriage. There were five kinds of marriages which were recognised by custom in Arabia "in the days of ignorance"; some of them little better than prostitution. The *Nikah* and the *Muta*, among the Shias, are the only survivals that link the present with the past in the sphere of marriage. (5) Secondly the pre-Islamic Arabs were in the habit of fixing a dower for the benefit of the wife just as the present day Muslims do. The woman was not a free agent in marriage and

(1) Russell, *The Law of Inheritance*, p. 200.

(2) See Tyabji, Principles of Muhammadan Law, pp. 4 & 5.

(3) See Abdur Rahim, *Muhammadan Jurisprudence*, pp. 17, 18 and 28 Russell, The Law of Inheritance pp. 238, 239.

(4) It must be observed here that the Prophet's father Abdulla, predeceased his grandfather hence he was debarred from inheriting his grandfather's estate, and was left to the care of his uncle, Abu Muttalib.

(5) Abdur Rahim, *Muhammadan Jurisprudence*, pp. 7-8.

she was in a perpetual state of tutelage under her male guardians. (1) In this respect it will be observed that the rule of Shafi law is very much reminiscent of pre Islamic Arabia. Unrestricted polygamy was the rule adopted in marriage, and in customary law there was no limit as to the number of wives which a person might take.

In the matter of divorce, Talaq, Ila, Zihar and Khula were the forms in vogue and their incidents practically similar to those in vogue at the present day, also a divorced wife had to observe *Iddat* or the period of waiting.

In early Arabia, adoption as a mode of affiliation was recognised. (2)

As to testamentary dispositions, (3) "an Arab's capacity to dispose of his property by will was as full as his power to deal with it by act *inter vivos*." There was no limit of one third or one-fourth, of which alone he could so dispose. He could make a bequest of his whole property to an heir or to a stranger.

Succession and inheritance were limited to male heirs only, and all females and minors were excluded. Among the heirs only the following were entitled to inherit: (1) sons, (2) grandsons, (3) father, (4) grandfather, (5) brothers, (6) uncles, (7) nephews. But it is not known in what order and in what proportion these respective heirs took the inheritance. (4)

Finally in early Arabia in the period under consideration proprietorship was individual, and the principle of the joint family was unknown. There was no distinction between moveable and immoveable, ancestral and self acquired property, (5) and women also could hold property. (6)

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(1) Abdur Rahim, *Muhammadan Jurisprudence*, p 9

(2) The Prophet abrogated this branch of customary law altogether, and hence it forms no part of Muslim Law now

(3) Under the Islamic Law it will be noted, a person cannot dispose of more than one third of his estate by will and no bequest could be made in favour of an heir, unless the other heirs consent to it after the death of the testator

(4) The law of Wills and Inheritance was altered by the Koran and by the legislation of the Prophet Muhammad to a considerable extent As regards the latter, the heirs of pre-Islamic Arabia so far as they were based on consanguinity, were recognised and many others were added the chief characteristic of which was the recognition of the rights of women. The later jurists further elaborated and made it into a complete system.

(5) It is alleged that at one time the joint family system reigned supreme among the early Arabs.—Russell, pp 68, 69.

(6) Abdur Rahim's *Jurisprudence*, p. 12. Here, also, it is worth noting that the customary law bears a close analogy on the present law.

Arab Customs—A Product of Social Conditions Prevailing in Arabia.

From this short sketch it will appear that the Muslim Law as administered to-day, has to be read in the light of the pre-Islamic customs. In the words of Abdur Rahim : " The Islamic legal system, as is well known, had its origin in Arabia, and has been developed by Arab jurists, and we should, therefore, naturally expect to find on it the impress of Arabia's social history and of the Arab mind and character. Moreover, it would not be correct to suppose that Islam professed to repeal the entire customary law of Arabia, and to replace it with a code of altogether new laws. The fact is, the groundwork of the Muhamadan legal system, like that of other legal systems, is to be found in the customs and usages of the people among whom it grew and developed (1)

It remains now to consider at some length, firstly how far the customs were the product of the social, political, economic and other conditions of pre-Islamic Arabia : secondly how, on the whole, the Muslim Law, although essentially a well developed and equitable system of law, is best fitted to a type of society whose wealth consists chiefly of moveable property. In a society like that of early Arabia, life is far simpler than in an advanced society, necessarily therefore the customary law is also simple ; and the transactions connected with the transfer of such property were also simple. Exchange and barter were the ordinary modes of alienation, especially in rural areas. It is not only in the law of property that this simplicity is observable; it pervades the whole social structure. Let us for example take certain social customs. It has been said elsewhere that the pre-Islamic Arabs were polygamous in their connections with the opposite sex and that in many cases the relation of the sexes bordered on prostitution. The Arabs were polygamous because they belonged to the Semitic race, and among the Semites the conception of marriage was that it was a contract. If marriage is a contract it follows there could be no limitation either on the number of the wives that could be taken, or to the facility by which the contractual tie could be untied. (2) As a writer has somewhat forcibly expressed it : " it cannot be too often repeated that neither is polygamy a specially Mohamedan institution, nor monogamy a specially Christian institution : both are much older than those religions. It is a

(1) Abdur Rahim, Muhammadan Jurisprudence, p. 1.
See also Russell, the Law of Inheritance p. 6.
Hamilton's *Hedaya*, by Grady. Introduction, pp. 29-30.
Ameer Ali, *Mahomedan Law*, pp. 1 and 2.

(2) See the Asiatic Quarterly Review, Vol. VI, 1888, p. 299 at p. 306.

question between a marriage by contract and a sacramental indissoluble marriage." Thus, even as regards marriage it will be noted, it is characterized by the same simplicity as is observable in other spheres of life.

Next to the law of marriage the law of inheritance is the most important part of the Muslim Law, hence it is regarded by the Muslim jurists as "the law of all laws". In pre Islamic Arabia, as stated before, only agnatic descendants and agnates were entitled to inheritance and women and minors were excluded. These customs of inheritance were closely connected with the life of pre-Islamic Arabia. In order to appreciate the exclusion of women and minors from inheritance let us revert for a moment to life in early Arabia. As mentioned already, the life of the wandering Arab was hard, and was one great struggle between nature and existence. Among the means of subsistence was booty obtained by pillage, and the persons who took part in these marauding excursions were, as may be naturally expected, men "capable of bearing arms", women and children being too weak for such enterprises. Among the members of the gang there may have been adopted sons or clients of the family, but the following were the chief persons who constituted the group—sons, father, brothers etc., i.e., descendants and agnates. On the division of the booty only those were given a share who took an active part in the adventure, and risked their lives for it, therefore the women of the family and the minors were excluded as being persons not entitled to a share of the plunder since they played no part in its acquisition.(1) In the Arab mind the property left by a deceased person was also regarded in the nature of booty, and hence the inheritance also was divided after the same model as in the division of booty. The same principle was followed in the cities and towns of Arabia, where the principal occupation of the people was trade, though under different conditions. In the words of Russell and Suhrawardi: "Law, based in all times upon *de facto* conditions, and especially so in times such as that with which we have been dealing, when it had itself scarcely developed beyond the stage of custom, would readily yield to the new force thus coming into existence. Whatever rights of inheritance belonged to the tribe in remote times and under the barbarous conditions of the desert, the inheritance of a Makkan trader would go to his children, and perhaps sometimes his brothers, when they were concerned together in commercial enterprises. These were his true "*asabah*", i.e. his 'strengtheners, supporters', who toiled with him in the acquisition of his wealth, and whose presence in the household scared away

(1) Russell, *The Law of Inheritance*. pp. 43, 44, 120.

robbers. No custom in the world could dispossess those who were (so to speak) assistant-successors in the business, and give it to some good-for-nothing desert kinsman, or kinsmen."(1)

The Rule as to the Exclusion of the Descendants of a Pre-deceased Son from Inheritance.

Nowhere is the effect of the tribal constitution of the Arabs seen better than in the rule previously alluded to, as to the exclusion of the descendants of a predeceased son from inheritance; to abrogate the rule would have led to many inconveniences which were repugnant to the notions of the early Arabs. Take the case of a family consisting of father, sons and grandsons: if in this family a son were to pre-decease his father, according to both the pre-Islamic custom and the modern law, the sons left by him would have no claim on the inheritance of their grandfather. If the rule were otherwise, the following would be the result. Suppose the grandfather died subsequently. Who is to be the head of the family? Is it to be the son of the pre-deceased eldest son or the surviving second son of the deceased? If the former then a nephew would be the chief of a family including his own uncles; and thus a situation would arise which was against the accepted canons of Arab society. To quote again from Russell and Suhrawardi: "Begin to recognise children of predeceasing members as representing their parents, and who was to be chief? An elder brother's son passed over because of minority might claim to displace his uncle when he came of age; orphans, infants would be rulers *in posse*; juniors would lord it over seniors, and all the settled usages of the tribe would be unsettled. Better an occasional injustice to the younger generation than put the older generation under its direction." (2)

The Reforms of the Prophet.

Turning now to the reforms of Muhammad the Prophet, it is clear that he purged the Arab customs of all that was extremely inequitable, unjust and immoral and at the same time he left many a custom unmolested. "A theologian and a moralist, he was also a practical man; and so long as institutions did not impigne upon either theology or morality he left them alone. He was no Don Quixote to tilt at the harmless windmills of a rapidly disappearing past." (3) It is needless to point out here the debt which Arabia and the Muslim world owe to the Prophet in that be stabilised the relations between the sexes by a simple and comprehensive law of

(1) Russel, *The Law of Inheritance*, p. 48.
(2) See Russell, *The Law of Inheritance* p. 120.
(3) Russell, *The Law of Inheritance* p. 184.

marriage. He gave to women and minors rights to inheritance which they had not before; he defined the heirs and fixed their shares. He laid down the order in which the heirs were to take and, to be brief, he laid down a system which was destined to be developed by bis successors into the elaborate and fully worked out system it is to-day. The Muslim Law of Inheritance, so it has been said, "comprises, beyond question, the most refined and elaborate system of rules for the devolution of property that is known to the civilised world, and its beauty and symmetry are such that it is worthy to be studied, not only by lawyers with a view to its practical application but for its own sake, and by those who have no other object in view than their intellectual culture and gratification." (1)

The point which next concerns us is that the Muslim Law as developed by later jurists is better suited to a mercantile community like that of the city-dwelling Arabs than to the agricultural communities of the Punjab or Malabar or Malaya.

Muslim Law not adopted completely even in Arabia and Egypt.

In order to substantiate this latter contention let us begin again with Arabia and countries adjacent to it where Islam reigns supreme and then trace our steps gradually to the Middle and Far East. It is interesting to observe how in Arabia itself the Koranic rules and the principles of the Muslim Law have not been undeviatingly followed, and that there are some Muslims there to-day who in theory profess to follow the Muslim Law, but in practice are governed by their immemorial customs. Such are the Bedouins and the tribes which inhabit non-urban parts of Hadramaut in South Arabia. Again some of the Arabs and Bedouins in Yemen and Egypt respectively, in certain matters prefer their own ancient customs to the rules of Muslim Law. Van Den Berg, describing the constitution of Arab society in the province of Hadramaut in Southern Arabia, observes: "Among the tribes there are not only customs which serve as supplement to the Muslim Law, as is the case among citizens: but there exist among them some customs in exact opposition thereto. It need not be said that neither the Kadthi nor his deputy can accept these customs as establishing any rights. Thus, it is a recognised custom that women are excluded from inheriting immovables called *Mathwa* (that is, immovables that must remain in the family) and the weapons of the deceased. These goods ought to fall to the agnates, and it is only to them that they can be alienated

(1) Mohummadan Law of Inheritance, Almaric Rumsey, Professor of Indian Jurisprudence, King's College, London, see, preface,

inter vivos. As the chief wealth of the tribes consists exactly in immovables of this kind and precious weapons, the heirs female and their decendants male obtain scarcely anything."(1) This offence against the 'Shariat' is seen also in Yemen, where some of the Arabs have gone so far as to retain some traces of matriarchy in their social organisation.(2) In Egypt, among the Bedouins, this fact of the existence of customs contrary to the rule of the Koran has recently come to notice and it is referred to by Kennet—"Although Bedouin custom is very largely based on this Koranic Law of inheritance, certain differences between the two codes are to be found. The most important of these differences is that in Bedouin custom females do not always inherit. It will be easily seen that, under the tribal system, it would be undesirable for property to pass out of the tribe with the marriage of a dead man's daughter to another tribe, whereas in the communal life of a town or village such considerations would not come into the case.

"Another difference in Bedouin custom is the provision for nephews of the deceased man in certain circumstances. A and B are brothers. If B predeceases A, B's sons can inherit the share which their father would have got of A's property on his death. This provision only exists in Bedouin custom, and there is no such clause in the Islamic law of inheritance."(3)

Let us now for a moment consider the position of Islamic law in India, Malaya, and the Far East, and deal briefly with the contrast which these lands present to Arabia. Taking China first, truly there could not be a greater contrast between a sandy, rocky, and almost

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(1) Selections from the records of the Bombay Government. No. CCXII, New Series. Hadramaut and the Arab colonies in the Indian Archipelago, by G.W.C. Van Den Berg, translated into English by Major Scaly (1887), p. 19.

(2) Two of our correspondents, no mean authorities on Islam, have written the following notes :

(*a*) "So far as I know, the surviving traces of a matriarchal system of inheritance in Arabia are to be found in Yemen, if the statement that 'among the Arabs of Yemen succession passes to the sister's son' is correct. The statement is made in the article "Mother Right," in Hastings' *Encyclopaedia of Religion and Ethics*, p. 855 Col. 1, on the authority (apparently) of Robertson Smith's *Kinship and Marriage in Early Arabia*, or one of the two other writers mentioned in the footnote."—*Letter from R.A. Nicholson, Professor of Persian, Cambridge University, dated 17th March 1927.* (*b*) "In *Sammlung Eduard Glaser*, 1, Vienna 1935, p. 129, there is a notice of a pagan community still existing in Yemen. Mr. Kennet's recent work *Bedouin justice* indicates the persistence in certain communities of pre-Islamic practice. These are the only references which I am able to furnish."—*D. S. Margoliouth, Professor of Arabic, Oxford University, in letter dated March 8th, 1927.*

(3) See *Bedouin Justice*, by Kennet, pp. 99-100.

uninhabitable country like Arabia, and a fertile and agricultural country like China with its teeming population. Hence when Islam spread to its borders as early as 628 A. D. it could scarcely be expected that the Chinese Muslims would follow every rule of the Koran in all its details. In the words of the Rev. E. Sell, "Those who hold high official positions even go so far as to perform certain religious ceremonies connected with the State religion . . . . They have enjoyed equal civil rights with others, have qualified for and held official positions, involving conformity to certain national laws and customs contrary to the spirit of Islam."

Customary Law in the Malay Archipelago.

The Malay Archipelago, the Punjab and Malabar are well-known homes of customary law. In Malaysia alone there are about thirty-one million Muhammadans, inhabiting "the largest group of islands in the world . . . . Most of the islands of the archipelago belong to the great equatorial forest belt. In its economical aspect the vegetation, whether natural or cultivated, is of prime interest". In the Malay Peninsula particularly, the state of the country is the very opposite to that prevailing in Arabia. "The whole peninsula may be described as one vast forest, intersected in every direction by countless streams and rivers which together form the most lavish water-system in the world....." The peninsula is remarkable in its fertility, and agriculture is the principal occupation of the people. But same conditions are observable in the Island of Sumatra, a remarkable feature of which is "the great variety of trees that vie with each other in stature and beauty, and as a timber-producing country the island ranks high even among the richly wooded lands of the archipelago." The physical and other attributes of the Malaya and Sumatra being very different from those of Arabia, the constitution of society, the customs, and the social institutions are also bound to differ. The Malays being essentially agricultural, developed a joint family system of a type suited to their stage of evolution. Of Negri Sembilan in Malaya and of the Menangkabau district in Sumatra, more will be said in the course of these pages, but here it is enough to observe that the Malays inhabiting these regions are divided into tribes, and that the rule of matriarchy regulates their social life. Some time about the thirteenth or fourteenth century they became Muslims but did they also change their customs and usages? No, they did not; for Islam sits very lightly on the Malay even to-day and many, if not most, of their rules of law follow in the wake of their age-long customs.(1) It would have been impossible for

(1) See Papers on Malay subjects, Vol. V, 1921, at page 8.

Malay society constituted as it was, to express itself in any other way than that indicated to them by nature. Therefore these Malays, although they adopted the religion of Islam, did not adopt the Muslim Law also. The simple act of change of faith could not cause the new converts to conform to a system of law contrary to all their inherited traditions and circumstances, even though their new faith in its fullest orthodoxy prescribed adherence to that system of law.

Customary Law in the Punjab.

In the Punjab, the land of five rivers—there is a geographical similarity with the Malay Archipelago.

"Of recent years most of them (rivers) have been utilized for purposes of irrigation, and have turned the sandy desert of the Punjab into one of the great wheat fields of the British Empire." Agriculture is the principal occupation of the people of the Punjab, a thickly populated province, about fifty per cent of the inhabitants of which are Muslims. Punjab Society too is organised on a tribal basis: the village community is the principal feature of the rural Punjab and the joint family constitutes the unit in the village. The law which the Punjab Muslims follow is not the Muslim Law, but custom: thus women are excluded from inheritance and the principle with regard to the devolution of property is not the Muslim Law of inheritance but the rule of survivorship. In many respects the customs followed are more Hindu than Muslim and the point which is of special interest here is, not only that the local converts to Islam follow custom but that the original Muslim invaders—the Sayyids, the Moguls and the Pathans—the custodians, as it were, of Muslim orthodoxy, all follow custom in preference to the law of their religion in many concerns of their daily life. Why? Because the Muslim Law which prescribes minute divisions of property and which is better suited to a society where the principal wealth of the country consists of movable property, is a system of law which goes against the very grain of a society whose means of subsistence is land. Allow land to be parcelled out between heirs—be they sharers, residuaries or distant kindred—and the village community as such will soon cease to exist. In the words of Tupper: "I would in connection with this subject invite attention to the remarks of Mr. St. G. Tucker, Settlement Officer, in his paper on the Customs of Dera Ismail Khan. He observed that the Muhammadan Law is most unsuitable for regulating the succession to land, and gives reasons for this opinion which appear to be singularly weighty. It is not only that joint lands are difficult to divide. Female succession and the wider liberty in the transfer of property by gift, which the Muhammadan Law allows, are not consistent with village usage. A nomad tribe

owning only flocks and herds would, if sufficiently numerous, probably permit marriages within its limits; daughters and sisters would not by inheritance convey the property to strange hands. The moving tribe, as a whole, would carry about with them both the herds and their owners. When the tribe has settled on the land broken up into clans and sections holding villages, the character of property has changed; and with its character the rules should also change respecting its devolution and transfer."(1)

II

The Place of Custom in Muslim Jurisprudence and Anglo-Muslim Law.

Sources of Muslim Law.

It is necessary to point out here, in a brief manner, the place accorded to custom as a source of Law by Muslim jurists, and secondly to proceed to indicate its position in India. The sources of Muslim Law are (1) the Koran, (2) the Hadis, or precepts of the Prophet, (3) Ijma', or agreement among the learned, (4) Qiyas, or analogical deduction. But among these custom comes next to Ijma'.(2) This is based on the principle "that whatever the people generally consider to be good for themselves is good in the eye of God." It is, however, considered inferior to the Koran, the Hadis and Ijma as a source of law, but superior to a rule derived mainly by analogy. Hence, according to the strict rule of Muslim Law, a custom opposed to the principles derived from the former sources is illegal. Under the Muslim Law the conditions laid down for the validity of a custom are: (1) it must be generally prevalent in the country, (2) it must not be merely a local usage in a village or a town, though it need not be ancient or immemorial, (3) it must be an established course of conduct, not merely a practice on a few occasions: custom being essentially territorial, it cannot affect the law in other lands, and as it is confined to a particular period it cannot affect the custom in another age, (4) lastly, it must not be opposed to the Koran or Hadis or Ijma(3),

Let us now consider for a moment the attitude of the British Courts towards customary law among the Muslims in India.

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(1) See C. L. *Tupper's Punjab Customary Law*, Vol. II pp. 87 and 88.

(2) The Hanafis regard custom as a source of law under the principle of *Istihsan* or juristic preference.

(3) See Muhammadan Jurisprudence, Abdur Rahim, pp. 55, 136 and 137.

Customary Law sanctioned by Statutes.

Throughout British India, excepting the territories covered by the Bengal, N. W.P. and Assam Civil Courts Act of 1887, provision has been made by express legislative enactment for the enforcement by the Courts of Rules of Customary Law.

In the Bombay Presidency under S. 26 of Regulation IV of 1827, the usages set up and established take precedence over the rules of personal law both in the case of Hindus and Muslims. The law is substantially the same in the Punjab and the North-West Frontier Province[1] where the statute runs as follows:—

"In questions regarding succession (special property of females), betrothal, marriage, divorce, dower (adoption).....guardianship, minority, bastardy, family relation, wills, legacies, gifts, partition or any religious usage or institution, the rule of decision shall be this:

(1) Any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished, and has not been declared to be void by competent authority,

(2) The Muhammadan Law in cases where the parties are Muhammadans (and the Hindu Law in cases where the parties are Hindus), except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to. In cases not otherwise specially provided for, the Judges shall decide according to justice, equity and good conscience."

In the Madras Presidency the following rule is in force:

"Where in any suit or other proceeding it is necessary for a Civil Court to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Muhammadan Law in cases where the parties are Muhammadans, and the Hindu Law in cases where the parties are Hindus, any custom (if such there be) having the force of law, and governing the parties or property concerned, shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished."[2]

It will be noticed that this enactment does not explicitly give precedence to custom over rules of personal law, but it has been held by the Privy Council that rules of customary law outweigh the rules of personal law applicable to the parties under this enactment, provided the usages set up are definitely established.

1. The Punjab Laws Act, IV of 1872, S 5, as amended by Act XII of 1878, and for the North-West Frontier, Regulation VII of 1901.

2. Madras Civil Courts Act, 1873, S. 16.

In the territories covered by the Bengal, N. W. P. and Assam Civil Courts Act, 1887,[1] no provision is made by legislative enactment for the enforcement of customary law.

The relevant provision is contained in S. 37 of the Act which is in the following terms:

"Where in any suit or other proceeding it is necessary for a Civil Court to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Muhammadan Law in cases where the parties are Muhammadans, and the Hindu Law in cases where the parties are Hindus, shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished.

In cases not provided for by the above clause, or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience."

Under this Act, no plea of custom opposed to the rules of Muslim Law was allowed to be set up in cases governed by the Act where the parties were Muslims, on the ground that Muslim Law unlike Hindu Law does not recognize the validity of usages opposed to the sacred law and as the enactment referred only to Muslim Law, the Courts of these Provinces, as a rule, did not admit proof of customs at variance with the general Muslim Law [Jammya *v.* Diwan, 23 All. 20 (1900)].

But this view did not find acceptance with the Privy Council who, in a case[2] governed by this Act, held that a plea of custom opposed to the law of Koran could be set up by the parties. As a result of this decision, the law under this Act is brought into line with the law applicable in the other provinces.

Hence, throughout British India, customs opposed to the Islamic Law have to be given effect to by the Courts in the case of Muslims in matters governed by their personal law.[3]

1. Bengal, N. W. P., and Assam Civil Courts Act, 1887, S. 37, as read with the Bengal and Assam Laws Act, 1905, Ss. 2 and 3 and the Acts of 1912.
2. Muhammad Ismail Khan *v.* Lala Sheo Mukh Rai, 17 C. W. N. 97.
3. *See* Appendix for the Muslim Shariat Act of 1937.

CUSTOM AND LAW IN ANGLO-MUSLIM JURISPRUDENCE

CHAPTER I.

SECTION I.

PRELIMINARY: THE MOPLAS OF MALABAR.

Malabar is a district in the Madras Presidency; geographically the name is sometimes extended to the Western Coast of the Peninsula including the Indian States of Travancore and Cochin, and part of South Canara. It is bounded on the north by the district of South Canara, on the east by the Western Ghauts which run almost parallel to the coast, on the south by the Indian States of Cochin and Travancore, and on the west by the Arabian Sea. The land is intersected by many rivers, none of them exceeding a hundred miles in length. The land in the plains of Malabar is very fertile, and as one proceeds further away from the coast, it rises gradually into hills, until the heights of the Western Ghauts are reached. Malabar is a very densely populated country, and the people for the most part live in villages. At the present day it is divided, for administrative purposes, into North and South Malabar, the line of division being the Korapuzha river, seven miles North of Calicut.

The word Mopla is often loosely applied to Syrian Christians, Jews and Muslims of the West Coast, who are known as Nasrani, Judea and Jonakan Moplas respectively. In British Malabar, however, it is used exclusively to designate a class of Muslims peculiar to this part of India. The origin of the word Mopla is doubtful; various theories are advanced, some of them being far-fetched. It is enough to state here the following, which are worthy of consideration :—

(1) Ma—Mother, and Pilla—a child i.e. a mother's child.

(2) Mappilla—a son-in-law; and

(3) Maha—great, and Pilla—an honorofic title, used as among the Nayars of Travancore.

Among these the last seems to be the most reasonable one.

The Moplas are a mixed race of Sunni Muslims chiefly inhabiting the districts of Malabar and South Canara; (1) and in the Laccadive Islands (some 125 to 200 miles off the coast of Malabar)

(1) There are some Moplas in the Indian States of Cochin and Travancore where they constitute only about 6 per cent of the total population.

almost all the inhabitants are Moplas.(1) They are to be found largely along the coast and in the interior of the Taluks of Ernad and Walluvanad in South Malabar. It may be pointed out here that, ethnologically speaking, Moplas, though all Muslims, are divided into sects, which, however, are not so numerous as in the Hindu system. Among them there is no restriction as to inter-dining, but generally they do not inter-marry, although there is no legal bar to marriage. First of all there is the priestly class, the Thangals or Syeds whose rank is highest in the social scale. They are mostly of Arab extraction and some of them claim to be descendants of the Prophet in an unbroken line of descent, like the Valiajarathingal Thangal of Ponnani. Next may be mentioned the Moplas who are governed by Marrumakkathayam principles of Law as distinguished from those Moplas who follow Muslim Law. As a rule the Moplas of North Malabar, of South Canara (in the Kasargode Taluq, south of the Chittari river, right down to the borders of Malabar), of the Laccadive Islands and some(2) near Quilon in Travancore, follow the rule of Nepotism, while in the rest of the West Coast(3), they follow Makkathayam or Muslim Law. Thirdly, there are Nayar and other high class converts to Islam, who fight shy of the lower class converts with whom Malabar abounds. The latter are those who are recent converts to Islam, known as "Putiya Islam", like the Mukkuvan(4) converts inhabiting the coast. In the Laccadive Islands(5) this division is well-marked. The people here, as in the

(1) The following is their census in the British territory:—
1871—612,789. 1901—925,178.
1881—722,896. 1911—1,046,834.
1891—916,436. 1921—1,099,453.

In Malabar they form 30 per cent of the population and about one-third of the total Muslim population of the Presidency.

(2) The Marrumakkathayam Moplas of Travancore numbering in all about 6,000 persons are to be found in the following villages:—
(1) Edava. (4) Ayiroor.
(2) Odettil. (5) Nellettil.
(3) Paravoor

(3) South Malabar, Cochin, Travancore and South Canara.

(4) See E. Thurston, *Castes and Tribes of Southern India*. p. 459, Vol. 4.

(5) For administrative purposes the Laccadive Islands are divided into two groups (1) South Canara and (2) Malabar, each group being under the Collectors of the respective districts.

The South Canara group of Islands consist of:—
(*a*) Ameni. (*c*) Kiltan.
(*b*) Kadamath. (*d*) Chetlat.
While the Malabar group includes:—
(*a*) Androth. (*c*) Kavarati.
(*b*) Agathi. (*d*) Kalpeni.

island of Ameni(1) for instance, are divided into four classes:—(1) Taravad, (2) Tanakampranavar, (3) Kudiyatis and (4) Melacheries, Inter-marriage between the first two classes is allowed as also among the last two classes, but not between the first two and the last class. Persons violating this rule are outcasted.(2)

THE MOPLAS—A MIXED RACE.

At the present day the generality of the Moplas of Malabar have very little of Arab blood in them. They are mostly drawn from the Cheraman, the Tiya, and the Mukkuvan population—the serf, labour. and fishing classes respectively. Conversions are also made, but not often, from the Nayars. Referring to the Moplas of the West Coast it is said, "the mixed nature of the race may be traced to-day in its varied physiognomy, those of old family and social position are often extremely fair with fine features, sometimes of a distinctly semitic type, while those at the other end of the scale are indistinguishable from the low castes from which they are constantly reinforced(3)." As a race they belong to the Dravidian stock. Mr. Thurston observes: "The cephalic index of the Mappillas is lower than that of the other Muhammadan classes in South India which I have examined, and this may probably be explained by their admixture with dolicho-cephalic Dravidians." In their customs, habits, and social life generally, the Moplas present some resemblance to the Hindus of the locality. The dress of the men usually consists of a piece of cloth tied round the waist—the only apparel which distinguishes them from the Hindus is a round cap worn on the head.(4) Again the Moplas speak the same Malayalam language as the local Hindus but use a modified form of Arabic for writing. They are also very superstitious like the Hindus and believe in magic, witchcraft, and the evil eye. There are also many traces of animism among them in the great veneration they pay to the dead, which is more noticeable in the interior of the district.

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(1) See—*A Short account of the Laccadive Islands and Minicoy* by R. H. Ellis, I.C.S., pp. 69 & 76. (1924).

(2) See—*A Short account of the Laccadive Islands and Minicoy*—R. H. Ellis, I.C.S., p. 69. (1924).

(3) It appears during the years 1905, 1906 and 1907, 750 persons were converted annually to Islam by the Maunat-ul-Islam Sabha at Ponnani (See Malabar Gazetteer, p. 190). And we understand that from the time the Sabha was founded in the year 1900 up to 5th March 1929, the date of our visit to Ponnani nearly 15,088 persons have been converted to the Muslim faith by that prosely, tizing institution.

(4) Among the labouring classes, particularly, there is little to distinguish a male Mopla from a Hindu Tiya, for instance; it is only by long residence in the country that it is possible to tell one from the other at a glance.

The Moplas belong to the Shafi school of Muslim Law. They are orthodox followers of the religion of the Prophet Muhammad, and they scrupulously follow the ritual and dogma prescribed in the Muslim religion. There are many mosques in Malabar, especially on the coast line and in the south. There is one special feature about them since they are not built with minarets as is usual in other parts of India; they are rectangular in shape "with sloping tiled roofs and ornamental gables in front like those of the Hindu temples."

SECTION II.

Tradition as to the origin of the Moplas.

The origin of the Moplas is unknown.(1) Various theories are advanced to account for it; there are besides a few traditional versions. To begin with the story that is largely believed, both by the Hindus and the Muslims alike, is to the effect that one Cheraman Perumal,(2) the last Emperor of Kerala,(3) dreamt a dream about a miracle performed by Muhammad, the Prophet in Arabia, which so impressed his mind that he became a Muslim. Subsequently, it is said, the Emperor divided his Kingdom among his kinsmen and set sail for Arabia; and after meeting the Prophet he resolved upon returning to his country in order to spread the new faith. Before leaving the Arabian shores he fell ill and died, but before his death he took care to urge upon some of his co-religionists to proceed to Malabar for purposes of conversion. Further, it is alleged, he gave letters to one Malik-Din, with this object in view, introducing them to the various local Rajahs who ruled over his former kingdom with a request to afford these missionaries every facility to spread Islam in the land. Armed with these credentials Malik-Din and his party—fifteen in all set sail for India and arrived at Cranganore

(1) See—Wilks "*History of Mysore*", Vol. II. p. 129, (Second edition).

(2) As to the period of Cheraman Perumal and his dynasty there are conflicting views on the subject.

(a) Some are of opinion that there were twenty-four Perumals in all, who ruled for two hundred and twelve years, i.e., from 216 A.D. to 428 A.D. This view rejects the traditional version as to Cheraman Perumal becoming a Muslim.

(b) Others like Logan, author of the Malabar Manual, extend the Perumal period to 825 A.D. According to Logan the last Cheraman Perumal became a Muslim and "he gives the inscription on his tomb in Arabia where he is said to have died while returning from Mecca."

(See Travancore State Manual, pp. 224, 225).

(3) It will be observed Malabar once formed part of the ancient kingdom of Kerala, whose limits extended from Kangarote river in Canara on the North, to Cape Comorin on the South. (See—A Gazetteer of Southern India By Pharoah & Co.,—1855).

in Cochin. The Cochin Rajah gave them a kind reception and, in particular, granted them lands to build mosques. Thus, it is said, mosques were built, at first, in the important towns (1) along the coast and that conversions to Islam followed in their trail.

Modern historical research, however, has thrown grave doubts as to the authenticity of this legend. The difficulty is to identify who this Cheraman Perumal was and when he became Muslim. There are also traditions to the effect that a Cheraman Perumal became a Buddhist and another a Christian; so that a recent writer on the history of Malabar has gone to the length of asserting that the story of the conversion of Cheraman Perumal to Islam is a myth—a pious invention of the Muslims. Be this as it may, it cannot be denied, considering the universal and deep-rooted prevalence of this tradition among both Hindus and Muslims, that there is some truth in the legend that an important personage in the country—may be an Emperor of Malabar or a Zamorin of Calicut—embraced Islam and left the shores of Malabar.

Putting legends and traditions aside, in the first place, there is ample evidence to show that there were many heathen Arabs settled all along the west coast from the earliest times.(2) The East and the West at least met in the field of commerce, and long before Vasco de Gama visited India in the year 1487 A. D. there was a constant exchange of commodities between Europe and India, (3) so much so that "the direct proof of the arrival at Rome of bales of muslin from Bengal in the earliest part of the first century (and probably long before) is furnished by the reproaches of a licentious poet addressed to the Roman matrons for their public semi-nudity in garments of "woven-wind" or "a texture

(1) The ten original mosques are reputed to have been built in the following places and in the order set down below.

(1) Cranganore (Cochin).
(2) Kollam or Quilon (Travancore).
(3) Heli or Mount Delli (North Malabar).
(4) Barkur.
(5) Mangalore (South Canara).
(6) Kasargode (South Canara).
(7) Cherupatnam.
(8) Dharmapatnam (North Malabar).
(9) Pantalayini or Quilandy (North Malabar).
(10) Chaliyam.

(See "Mappilas of Malabar" by C. Gopalan Nair pp. 18 to 22) (1922).

(2) See—Wilks "*History of Mysore*", Vol. II, p. 129, (Second edition).

(3) See the report on the Miscellaneous Old Records of the India Office, Nov. 1, 1878, p. 43.

of cloud."(1) The point of importance here is that first, the Phoenicians, then the Arabs, were the pioneers in this direction ages before the Portuguese "at last, rounding the Cape of Good Hope, burst into the Indian Ocean like a pack of hungry wolves on a sheep walk." Hence at the time of the advent of the Prophet Muhammad in Arabia (with which alone we are concerned here) in the first decade of the seventh century A.D., there were many pagan Arabs settled on the coasts of South India for purposes of trade,(2) who contracted alliances with women of the country—the progenitors of the Marakkayars (or Labbays) of the East and Moplas of the West Coast.(3)

The Introduction of Islam into Malabar.

There is a great difference of opinion regarding the approximate time when Islam was first introduced into Malabar, and it is enough for our purpose to indicate briefly here the main features of this controversy.

(1) It is said that the first settlement of the Muslims on the West Coast took place some time in the seventh century A. D.(4)

(2) Another school lays down the period to be the beginning of the eighth century A.D., during the reign of Ummayad Caliph Valid I, 705-715, A.D.(5)

(3) A third view puts it to the early decades of the ninth century A.D. during the Cheraman Perumal period.

(4) The fourth and the last view is that it was some time during the Middle ages, but later than the Middle of the ninth century A.D.(6)

Whatever may have been the period when Islam was first introduced into Malabar, this much is certain, that when Ibn Batuta visited the country, he found the Muslims very prosperous, and the following is his description: "we now come into the country of Malabar, which is the country of black pepper. Its length is a journey of two months along the shore from 'Sindalur to Kawlam... .....' But, in most of their districts, the Mussalman merchants

(1) *Wilks History of Mysore*, Vol. II, see p. 129.

(2) See Logan, Malabar Manual, p. 195, Dr. Burnell, *Elements of South Indian Paleography*, p. 45, footnote 1, and p. 44, footnote 2.

(3) See Wilks *History of Mysore*, Vol. II, p. 129.

(4) Francis Day, *The Land of the Perumals*, p. 365.

(5) See *History of Kerala*, pp. 448 and 449, by Padmanabha Menon and Lieutenant Rowlandson's Commentary in Tohful-ul-Mujahideen, p. 5, footnote.

(6) The period may be fixed between 852 A.D. to 915 A.D. after the visit of the Arab merchant, Sulaiman, to Malabar and before the Muslim Arab Merchants had voyaged as far as Kedah in the Malay Peninsula. Extracts from the Straits Branch of the Royal Asiatic Society; Journal No. 77, Dec. 1917, p. 171.

have houses, and are greatly respected."(1) Describing Calicut, he says: "we next came to Kalikut, one of the great ports of the district of Malabar, and in which merchants from all parts are found..... The greatest part of the Mahomedan merchants of this place are so wealthy, that one of them can purchase the whole freightage of such vessels as put in here; and fit out others like them." (2)

THE MOPLAS IN THE FOURTEENTH CENTURY AND AFTER.

The position of the Muslims in Malabar during the fourteenth century of the Christian era may be shortly summed up thus. They were in the heyday of their power and glory, and were already proprietors of lands and houses. The circumstances under which they lived seem to have gone a long way in making them prosperous merchants, and, it is said, that in the city of Manjaru alone there were four thousand Muslim merchants, among them being some of the greatest merchants from Persia and Yemen (South Arabia).(3) And, further, Islam was firmly rooted in the land, and the conversion of the Hindus was going on apace.(4) In the city of Hili (5) there was, so it is said, a mosque which was revered "both by the Muhammedans and infidels,"(6), and in a place like Fandarina, "the Mahomedans have three districts, in each of which is a mosque, with a judge and preacher."(7)

Turning to the Mopla community during the first half of the sixteenth century, the following facts are noticeable.

(1) The Moplas formed one-fifth of the total population and their number was increasing by leaps and bounds.

(2) They were spread all over the districts.

(3) The Zamorin gave them all possible help, even to the extent of providing them with servants. To quote Duarte Barbosa: "As soon as any of these Merchants reached the city, the King assigned him a *Nayre*, to protect and serve him, and a *Chatim* clerk to keep his accounts and look after his affairs, and a broker to arrange for him to obtain such goods as he

(1) *Travels of Ibn Batuta*, (translated from the original Arabic by Rev. S. Lee), p. 166.

(2) *Travels of Ibn Batuta*, p. 172.

(3) *Travels of Ibn Batuta*, p. 169.

(4) *Travels of Ibn Batuta*, p. 170.

(5) *Travels of Ibn Batuta*, p. 170.

(6) *Travels of Ibn Batuta*, p. 170.

(7) *Travels of Ibn Batuta*, p. 171.

had need of, for which three persons they paid good salaries every month."(1)

(4) The Arabs continued to arrive in larger numbers and settle in the country for purposes of trade.(2)

(5) They had their own Moorish governor to arbitrate and settle all disputes between them in the town of Calicut.(3)

(6) And, finally, in several respects they followed the customs of the country. They were governed by the Marumakkathayam rules of inheritance like the Nayars, with this difference, that half their self-acquired property devolved according to the Muslim law.(4)

(7) The Moors were in great number in all the ports (and they were not a few) on the sea coast of Malabar—"all natives of the land"—who spoke the Malayalam Tongue.(5)

Passing on to the second half of the sixteenth century and the beginning of the seventeeth century, Sheikh Zynuddin, himself, a native of the land, has left the following account of the Moplas and of the country of Malabar in Arabic.(6) During this period the kingdom of Malabar was divided amongst various Kings and chieftains. As Sheikh Zynuddin observes: "And amongst the chieftains above alluded to, there were some whose territories did not exceed one parasang in extent, whilst others exercised rule over far more extended domains. Some again had at their command only 100 soldiers; whilst others could bring into the field from 200 to 100,000 men, and some even more than this last number."(7)

Secondly, the Zamorin of Calicut was still the greatest of the Kings of Malabar.(8)

(1) The Book of Duarte Barbosa by M. L. Dawes, Vol. II, p. 77.

(2) The Book of Duarte Barbosa by M. L. Dawes, Vol. II, p. 76.

(3) Cf. Duarte Barbosa's description: They sail everywhere with goods of many kinds and have in the town itself a *Moorish Governor* of their own who rules and punishes them without interference from the King, save that the Governor gives an account of certain matters to the King." Vol. II, p. 76.

(4) According to Duarte Barbosa: "These follow the Heathen custom in many ways; their sons inherit half their property and their nephews (sisters') sons) take the other half." p. 74.

(5) See The Book of Duarte Barbosa, Vol. II, pp. 79—88.

(6) Tohfut-ul-Mujahideen, Translated by Lieutenant Rowlandson.

(7) Tohfut-ul-Mujahideen, p. 58.

(8) Tohfut-ul-Mujahideen, p. 59.

Thirdly, the Zamorin still continued to support the Moplas and the Arab traders warmly in their struggle against the Portuguese, which was proving disastrous to their interests.

In the words of the author of Tohfut-ul-Mujahideen : "Now it should be known, that from the Mahomedans of Malabar having no Amir (1) amongst them, who was possessed of sufficient power and authority to govern them and to watch over their interests, they in consequence paid allegiance to the pagans. Notwithstanding this, however, engaging in hostilities against the (Christian) infidels, and freely expending their substance in warring against them, each according to the extent of his means; being assisted in this warfare by that friend of the Mahomedans the Zamorin,.....until their own condition in Malabar had become greatly reduced, in consequence of the interruption to their trade and the sacrifice of life and devastation of property, to which they had, in consequence of such course, subjected themselves."(2)

Fourthly, the Portuguese and the Dutch were slowly gaining ground and were already masters of the Indian seas; the trade of Malabar passed into their hands and that of the Moors, and the Moplas lost all their former wealth and position, which they never again regained.(3)

Fifthly, the Moplas were subjected to all manner of indignities at the hands of the European nations, who were the men in power. The Portuguese particularly began "to oppress the Muhammadans and to bring ruin amongst them."(4)

Sixthly, in spite of the set-back thus received by the Muslims with regard to their wealth and influence, the chief part of the population

(1) Amir=prince or lord.

(2) Tohfut-ul-Mujahideen, pp. 21 and 22.

(3) It was not the Moors alone that suffered by this change. The Portuguese and the Dutch turned the trade groups into other channels, which resulted in cutting off entirely the Mediterranean trade and with it the prosperity of the City States of Italy. Richard Cumberland thus forcibly expresses this incident in verse :

"Through the breach
All Lusitania poured. Arabia mourned,
And saw her spicy caravans return
Shorn of their wealth ; the Adriatic bride,
Like a neglected beauty, pined away,
Europe, which by her hand of late received
India's rich fruits, from the deserted mart
Now turned aside, and plucked them as they grew."

Historical Fragment.

See Tohfut-ul-Mujahideen, p. 77.

(4) See Tohfut-ul-Mujahideen, p. 107.

of the sea ports still consisted of Muslims where, according to Sheikh Zynuddin, they formed a tenth of the whole population.(1)

Seventhly, conversions to Islam were going on all the same, and one unique feature of these conversions was that the converts were not ill-treated by their countrymen (the Nayars) for their change of faith. "The Nairs do not molest their countrymen who have abjured idolatry and come over to the Mahomedan religion, nor endeavour to intimidate them by threats, but treat them with the same consideration and respect that they evidence towards all other Mahomedans, although the persons who have thus apostatised be of the lowest grade."(2)

Lastly, in Cannanore and its neighbourhood in North Malabar the majority of the Moplas were governed by the Marumakkathayam principles in the matter of inheritance. In this connection the remarks of Sheikh Zynuddin are worth quoting: "And this peculiarity of excluding the immediate offspring, has been adopted by the greater part of the Mahomedans of Cannanore, and those who are dependent on them in the neighbourhood of that place; although there are not wanting among them, who read the Koran, treasure up its maxims, and study it with apparent zeal, being seemingly desirous to improve themselves by science, and who are regular at the performance of religious worship."(3)

The next stage in the history of the Moplas is reached in the eighteenth century; and we are mainly confined here to the part played by the Mysorean Kings and the moplas in the land of Malabar during the latter part of the century. It is needless to say that only a very brief outline of the events and condition of Malabar and its people during this period can be attempted.(4)

The Mysorean Invasions.

The invasion of Haidar Ali happened in this manner. The Zamorin attacked the Raja of Palghat, who unable to defend himself single-handed, sought help from Haidar Ali, the King of

(1) It may be pointed out here that Duarte Barbosa mentions one-fifth.

(2) Tohfut-ul-Mujahideen, p. 73.

(3) Tohfut-ul-Mujahideen, p. 63.

(4) For this purpose, The Tellicherry Factory Records and the Report of a Joint Commission (in three volumes) from Bengal and Bombay (1792-1793), contain a mine of information, which is indispensable for the historian of the period.

Mysore. The latter sent his troops to Malabar through the Palghat Gap[1] during the years 1760 to 1761 A.D. and, winning an easy victory over the Zamorin and himself descending into Malabar in 1766, soon became the master of the country from Cochin in the South to Chirakkal in the North.[2] Haidar Ali, however, allowed some of these conquered chieftains to retain their territories on condition of paying him tribute, detaining the Kingdom of Calicut in his own hands.[3] During his administration the country was divided into Taluqs and Districts with officials to collect the revenue. His chief object was to get money, and when he realised his purpose, he left the people of the country unmolested in other respects. Here it may be pointed out that the Kings derived their revenues in Malabar chiefly from imposts on merchandise and from fines, besides which they derived considerable income from their own private estates.[4] From the time of Haidar Ali, however, a new system of land revenue was introduced. The Mysore King employed Canarese Brahmins as his revenue officials, who collected the taxes from the cultivators in actual possession of the land;[5] hence, during Haidar's invasions and still more during Tippu's conquests of Malabar (when many of the Brahmins[6] and the Nayars, the owners of most of the land,[7] ran away either to the forests or

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(1) See The Reports of a Joint Commission, 1792-1793, Vol. I, p. 17.

(2) See The Reports of a Joint Commission, 1792-1793, Vol. I, p. 17.

(3) See The Reports of a Joint Commission, 1792-1793, Vol. I, pp. 18-20.

(4) See The Tellicherry Factory Records, No. 11, 8th March, 1793, Letter to the Commissioners, Question 10: "The Rajas made no collection *from the Lands* except a tax under the denomination of *Iuncoa* in goods passing thro' their country and penalities levied upon *Crimes*, also a part of the property of any rich person deceased belonged to the Raja, who also possessed his own particular Lands, which he collected the produce of."

See The Reports of a Joint Commission, 1792-1793, Vol. I, pp. 10 and 11. It appears, in addition to the above sources of revenue, the Rajas derived large sums of money by levying a succession tax on their Mopla subjects. "More especially as, in addition to these rights they, under the head of Pooreshandrum, exacted from the Moppillas (i.e. the descendants of the Mussulman converts) a share of the estates of all deceased persons."

(5) The Reports of a Joint Commission, Vol. I, 1792-1793, pp. 173-179.

(6) Tellicherry Factory Records, No. 11, 8th March, 1793, p. 101. Question XIV. "The Brahmins considered themselves as proprietors of the land, which they let out for hire or gave waste spots to be cultivated for a certain term of years for which they received fines."

(7) Tellicherry Factory Records, No. 8, 7th September 1790. Letter to the Governor-General in Council of Fort William. "*The Nairs are the original proprietors of the country and if restored to their ancient possessions must reduce the Moplas to a state of vassalage*, which for many years past, aided by Tippu's troops, they have been endeavouring to shake off."

to the neighbouring state of Travancore[1] out of fear) the persons in actual possession of the soil, the cultivators or *kudiyans* in possession of the lands, paid their revenue to the Kings of Mysore in their own name and eventually asserted *an independent right over them.* The point that needs emphasis in this place is that in this way many of the Moplas and lower classes of the country became proprietors of land, especially in South Malabar, where the hold of the Mysorean kings was longest and greatest, and thus, even after they were driven out of Malabar and the old proprietors of land returned from their hiding places, these cultivators were ultimately able to successfully set up a right of prescription as against their quondam proprietors.[2] Apart from the change introduced into the revenue system of Malabar, Haidar Ali's regime does not require any special mention;[3] in his administration there was no element of the religious bigot, and he left his Hindu subjects alone in the matter of their religion and social customs.

Tippu Sultan, King of Mysore.

Tippu invaded the country and became the King of the entire district. From now the Ali Rajah of Cannanore, a Mopla chieftain[4] (who owned the Laccadive Islands and a small piece of territory round about Cannanore in North Malabar) figures very largely in the political events of the period.[5] Ali Raja had a bias towards

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(1) See Tellicherry Factory Records, No. 11, p. 130, 31st June 1792, Letter to Bombay, re-Tippu's invasion: "The Nairs fled some to the jungle, others to the Travancore country."

(2) See Reports of a Joint Commission, Vol. I, 1792-1793, pp. 179—180.

(3) Tellicherry Factory Record, No. 11, 8th March, 1793, p. 107, Question 25. Extract: "In reply to the latter part of the Queries, I have to observe that as far as I have been informed Hyder's invasion made no alteration in the Ancient Manners and customs of the Malabars, ... *Taxation indeed was introduced,* but I do not find that any material alteration was made in the property and possessions of the inhabitants. The Rajas were at times, it is said, allowed to retain possession of their country and collect its revenues on paying a tribute to Hyder's Circar."

(4) If it is a woman she is known as the *Bibi of Cannanore.*

(5) A word may be said here as to the origin of the family of Ali Rajah of Cannanore, the only Mopla Chieftain in all Malabar. From time immemorial Malabar was divided into four main principalities (1) Chirakkal (2) Calicut (3) Cochin and (4) Travancore. Among them the Rajah of Chirakkal otherwise known as the Kolathri Raja, reigned over a territory roughly corresponding to what is known as North Malabar i.e. all the territory lying between the Koropuzha river, a few miles North of Calicut, to the River Cavaye which divides the districts of South Canara and Malabar. His capital was Cannanore. Somewhere during the early middle ages (the end of the 11th or the beginning of the 12th century) one of the trusted officials of this Rajah, a Nayar chieftain, became a Muslim. But all the same, he and his heirs though Moplas, continued to serve

the Mysorean kings, for the latter like himself, belonged to the Muslim religion, and he saw on this occasion an opportunity for his own aggrandisement. During the reign of Haidar, the Ali Raja had become even the King of Chirakkal for a time. That is the period when the English factors at Tellicherry were anxious to conciliate the Ali Raja or the Bibi of Cannanore ; for the latter were the political head of the Moplas and naturally the English were eager to secure their goodwill. In the final contest of the English and the native princes of Malabar on the one hand, and Tippu Sultan and the French on the other, the English factors at Tellicherry were very often at their wits' end to induce them to side the British in the war against Tippu. But she was wavering and not infrequently favoured Tippu's cause.(1) Finally Tippu was defeated, and Malabar passed into British hands in 1791 A.D.

An appreciable number of Nair families who became Moplas during this period retained Marumakkathayam Law, especially in North Malabar. Referring to the Moplas in general the Tellicherry factors furnished the following answer to the queries of the Joint Commission from Bengal, in the matter of inheritance of nephews by the sister's side : " This mode of succession seems also pretty general among the lower classes of Hindoos, as well as the Moplas who appear to have adopted their ideas in this respect."(2) Here it may be mentioned that the Moplas became owners of land in several ways, some of which have been already mentioned, and one of the

the Kolathrie hereditarily, first as Ministers and later on as Admirals. It is in this latter capacity they came to be known as Ali Rajahs or Ady Rajahs i.e. Lords of the Deep. In recognition of their services the Kolathris gave them the Laccadive Islands. Sometime about the 16th century A.D. the Ali Rajahs carved out of the Kolathris' dominions a small tract of territory round about the town of Cannanore, and reigned as independent chiefs, although rendering a nominal allegiance to their former masters, the Chirakkal Rajahs. After the Mysorean invasions, when the British took over Malabar, they were allowed to be in possession of the town of Cannanore, but were deprived of all ruling powers.

(1) The Tellicherry Factory Records, 12th June, 1790, No. 8.

(2) See Tellicherry Factory Records, 8th March, 1793, No. 11, Question 2. See also Tellicherry Factory Records No. 11, 8th March, 1793, Question 15. "The Moplas altho' they retain their own religion appear to have adopted some of the Malabar customs particularly in what respects inheritance." See also Tellicherry Factory Records, No. 11, 8th March 1793, p. 103 Question 17, "The Moplas having as before mentioned adopted the Malabar custom respecting Inheritance thought it necessary to make a small distinction in their Caste and accordingly divided themselves into *four classes* named as follows—Colongara Crion ; Mupirechy Crion, Poccara Crion—these classes altho' they cannot intermarry nor inherit each other's property do not appear to have any other essential distinction."

modes of acquisition was by purchase from the Brahmins and the Nayars. The following answer(1) was furnished to the Joint Commissioner by the Tellicherry officials in the year 1792-1793. "The Brahmins at times either pressed by necessity or from dissipation disposed of lands to people of other Classes, who again disposed of them to whoever could afford to purchase, and thus in process of time property became disseminated among the lower classes of Hindus and among the Moplas,"(2) and it appears that even from the earliest times the Moplas owned property which was in course of time augmented by their own efforts, since they had always been a very industrious and adventurous people. Again quoting from the Tellicherry Factory Records: "Such of the Natives as embraced the Mahomedan religion and were proprietors of land or other possessions, at the time were suffered to retain their possessions, for it does not appear that any endeavours were used to prevent their Conversion, but such as chose might embrace Mahomedanism, therefore it would seem that the Moplas were possessed of land and property from their first establishment, which in process of time must have increased, as they appear to be a much more industrious set of people than the Hindus."(3)

The History of the Moplas from the Nineteenth Century Onwards

A word may now be said on the history of the Moplas from the time of the English conquest to the present day. The condition of Malabar during the early years of the English Administration was far from what it is to-day for gradually the effects of the Mysorean wars, which appear to have laid the country desolate, were removed and Malabar once again became peaceful and prosperous. To begin with the number of converts to Islam increased considerably

(1) See the question 15, Tellichery Records 8th March 1793, No. 11, "Setting aside the fabulous story of the miracle, if the other part of the account is true that the Arabs settled and endeavoured to spread the Mahomedan religion in the Malean at the time of its commencement in Arabia, the period of the Mopla-settling in the Malabar Country is distinctly ascertained.....If I might hazard a conjecture I think it more probable that the ancestors of the Moplas had embraced the Mahomedan religion previous to their settling in the Maliam than that they were first established in the Malabar Country and were afterwards converted to Mahomedanism; for they appear to be a different race of people from the Hindus in the Malabar Country."

(2) Tellicherry Factory Records, 8th March, 1793 No. 11, Question 14.

(3) Tellicherry Factory Records, No 11, 8th March 1793, Question 16.

See also the following extract "But the Brahmins say that at first the Moplas had no lands of their own, but that as their numbers increased they began to build mosques, for which purpose they purchased lands from the Brahmins as their own private property."

(especially in South Malabar) soon after Tippu left the country for good. The Rajas, under whom many of them lived, seem to have ill-treated (1) these Moplas. In the words of the Joint Commissioners: "However this may be, the conduct of the Rajas of Samoory's family have since the expulsion of Tippoo's troops or from the beginning of 1791, been far from judicious; for instead of seeking to conciliate their old enemies the Mappillas (who are now become in these southern parts of Malabar more numerous than even the remaining Nayars and Hindus) they thought of attacking and subduing them."

Secondly, a section of the Moplas,(2) who seem to have been mainly recruited from the scum of the native population of South, East Malabar and who were a source of trouble ever under Tippu continued to be rebellious in the last decade of the eighteenth century. They were divided into gangs, and, living in forests under the leadership of some notorious robber or brigand like Uni Moota Moopa, swept over the interior of the country, robbing and kidnapping 'young children, male and female of the Nayres', whom they sold to the French and the Dutch merchants in the ports of Malabar, and thus they were a terror in the land.

Thirdly, the Moplas on the coast, who were always peaceful, carried on their usual vocation of trade and amassed large fortunes. In addition to the family of the Ali Raja of Cannanore who derived considerable wealth by trade, there were many rich merchants in Tellicherry and other places in North Malabar who, like Chocara Moosa, were able to advance money even to the Ali Raja of Cannanore on a mortgage of the Laccadive Islands.(3)

Fourthly, the early administrators of the district like Mr. Farmer and Major Dow were always anxious to conciliate the Moplas as far as possible.(4)

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(1) See Reports of a Joint Commission, 1792-1793, Vol. 1, pp. 240 and 259, and Vol II, p. 91.

(2) Corresponding to these Moplas of the interior were the pirates of Malabar on the coast, whose profession was piracy. In the 18th and 19th centuries the Malabar coast was infested with pirates, both European and Asiatic. See *The Pirates of Malabar*, by Colonel J. Biddulph.

(3) Reports of a Joint Commission, Vol. I, 1792-1793, at p. 163. "And besides those who are land-holders and disposed to be industrious cultivators of the soil, there are in all the townships and cities on the Coast (which do indeed owe their origin to, and are principally occupied by this class of inhabitants) a very respectable body of Mappilla merchants, whose peaceable and laudable exertions in their commercial pursuits, entitle them to every encouragement."

(4) See the Joint Commission Reports, 1792-1793, pp. 161-162, and p. 166. Vol. I.

Fifthly, many of the Moplas became owners of considerable land and property in Malabar which they possess even to this day.(1)

Sixthly, arrangements were made for the proper administration of justice to the people of the country, and a temporary Court of Justice was at first established in Calicut and the following Regulations were framed.

(1) "In all cases of civil nature.....Complainants to choose whether their suits should be referred for decision to the Rajas, or to arbitration, or tried immediately by the presiding member of the court."

(2) "As to the Rules of law to be observed in this judicature, they were ordered to be conformable to those of the Defendant."

(3) "And subject to an 'unwritten Law' 'country custom' equally binding on both parties, and superior also, in respect to its weight and duty of observance to the Law of the Defendant's particular religion."(2)

In the words of Mr. Duncan, a member of the Joint Commission from Bengal and Bombay, "At the same time as there may and must, probably, be, within the province of Malabar local and customary modifications of the general rules of the Mohamedan as well as of the Hindoo laws; it is not meant that the authentick, but general, information of which we are already in possession on each of these subjects, should supersede the usage always to be observed, of ascertaining of the law of custom (as already specified in the 20th article of the judicial regulations in civil cases) that shall be more particularly applicable to the special circumstances of each case, which must always be ascertained in the manner to be directed in the foujedary regulations from the local and living channels of information." (3)

Finally, besides the Mopla families who were from time immemorial following Marumakkathayam Law, the converts to Islam of Tippu's period who belonged to Marumakkathayam Castes continued to be governed by the rule of Nepotism, as they do at the

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(1) See the Reports of a Joint Commission, 1792-1793, Vol. I., pp. 169-170.

This remark is particularly applicable to the Moplas in North Malabar who even now continue to own lands to a large extent, unlike those in South Malabar where the number of Mopla landlords could be counted on one's fingers. See The Moplah Nad by G. Tokiaam p. 12 (1924).

(2) See Reports of a Joint Commission, 1792-1793, Vol. I. pp. 169-170.

(3) See Reports of a Joint Commission, Vol. III, 1792, 1793, Rules 20, 12 and 37.

present moment.(1) In the words of Mr. Duncan: "in so much, that altho' Mohamedans in point of religious profession, they have generally retained among them, and still almost universally observe, the Malabar law of inheritance, by preferring to their sons, their nephews by their sisters, which mode, as well as every other established practice peculiar to them in civil cases, our Courts must, of course, (in the instance of every family inheritance, when it shall be found to be the rule) admit and be guided by; but with regard to all other cases, where their settled and known customs do not lay down a rule in respect to matters of civil discussion..... must be of course the Mohamedan."(2)

SECTION III

CONVERSIONS TO ISLAM

The early heathen Arabs, as mentioned elsewhere, had planted colonies on the Malabar coast and formed marital unions with women of the Country from the earliest times, thus laying the foundations of a mixed community the Moplas; and not infrequently they contracted marriage relations with women owning landed property and following Marumakkathayam.(3)

At the same time converts were also often made from the Indian communities of Malabar by the gentle art of religious persuasion,(4) and for this purpose the early missionaries gave as great latitude as possible to the converts in the matter of their local customs and habits. For example, take the community of the *Khojas* in the Bombay Presidency. Pir-Sadr-Din who converted them, weaned them away from Hinduism to Islam, and he effected this object not only by allowing them to retain many of their social customs and laws, but, even in the matter of their religion, he presented Islam to them in a Hindu garb representing that Islam was only a part of Hinduism and Ali (the son-in-law of the Prophet) only the tenth and last incarnation of the Hindu God, Vishnu. (5)

It is not necessary to labour this point further, and we will content ourselves with the remark that even from the earliest times

(1) To this list may be added the number of Marumakkathayam Castes who were converted (wholesale) during the series of Mopla riots including the last a few years ago. Although many of these forced converts changed their profession of Islam almost immediately after, yet a few continued to swell the ranks of the Marumakkathayam Moplas.

(2) The Report of a Joint Commission from Bengal and Bombay, 1792-1793, Vol. III Rule 38.

(3) See Buchanan, Journey from Madras through Malabar, Vol. II, pp. 421, 422.

(4) See The Asiatic Quarterly Review, Vol. VI, 1888, p. 305.

(5) See The Advocate-General ex-relatione *Daya Muhammad* and others v. *Muhammad Husen Husani* and others. (1866), 12 Bombay High Court Reports 323 at page 359.

the relations of the Hindus and Muslims have been in many cases harmonious, (1) and many examples may be given to prove the amity existing between these two races from very early times to this day ;(2) although instances are not wanting in Indian history, where often they have been at logger-heads "hating each other for the love of God."

Here it is well to point out the great tolerance of the Hindu Rajas of olden times towards these foreigners, the Muslims, the Christians, and the Jews, who had settled in the midst of the people whom "neither they nor their forefathers knew." The outstanding features of these settlements were :

(1) They were composed mainly of foreign merchants whose profession was trade.

(2) They all belonged to religions which believe in conversion.

(3) They were all received with great respect and consideration by the native Rajas of the land, who gave them every facility for trade and they were so kind and considerate to these foreigners as to leave them unmolested in their religious beliefs, customs, and laws. In this connection, the following observations of Sir Charles Lawson are appropriate. "In Cochin the Raja, with a liberality hardly to be understood, gave them a big piece of land, tax free, to build their houses and synagugue which was constructed in 1568 near one of the most celebrated temples in Cochin situated in the Muttancherry Palace grounds, a single boundary wall separating the two places of worship" (3). The following quotation would further bring out the great tolerance of these Indian Rajas, "Without Cochin, among the Malabares, there dwelleth also divers Moors that believe in Mahomet and many Jewes, that are very rich and there live freely (without being hindered or impeached) for their religion, so also the Mahometans with their churches

(1) See the *Asiatic Review*, Vol. VII, No. 22 New Series, February 15, 1916, p. 177. In Malabar we have proof of it in the veneration paid to the mosque in Mount Deli both by Hindu and Muhammadan sailors to which Ibn Batuta refers as early as the fourteenth century: in the veneration paid by all classes to the saints and mystics of Islam who are buried all over India and also in Malabar. A lengthy discussion on the subject is out of place here, yet it would not be quite irrevalent to mention one or two of them in this connection. There is a mosque in the Wynad Taluq in the district of Malabar which, it is said, was founded by a Muslim saint on a site granted to him by a Nayar landlord, a Hindu by birth, and it is alleged that the saint worked a miracle, which was the immediate cause of the gift and ever since the mosque has been an object of reverence of all the inhabitants (both Hindus and Muslims) of the locality. See Wynad, Malabar Series, by G. Gopalan Nair, 1911, p. 133, re Kallianatha Pally.

(2) See *Omens and Superstitions of Southern India*, by Thurston, p. 128.
Gazetteer of Tinnevelly District p. 99.

(3) See the Indian Review, 1913, No. 2, February, Vol. XIV. *The Jews in Cochin.*

which they call mesquiten ; the Brahmans likewise (which are the *Spiritualities* of the Malabares and Indians) have their idols and houses of divels which they call *Pagodes*. These three nations doe severally hold (and maintain) their lawes and ceremonies by themselves, and live friendly (and quietly) together, keeping good policie and justice, each nation being Kinges counsell, with his Naires which are his gentilmen and nobilities: so that when any occasion of importance is offered, then all those three nations assemble themselves together, wherein the King putteth his trust " (1).

(4) The Indian Rajas of Malabar did not put any hindrance on the path of the religious missionary in his work of converting the native population. The Jew, the Christian, the Muslim all worked in their own way to effect this purpose. In the first place, there was no question of forcible conversion at the point of the sword for the simple reason that political power lay in the hands of the Hindus. Conversion to Islam and Christianity in Malabar, at least, till the Portuguese came into power, was always peaceful. Slaves were plentiful.(2) Now it may be mentioned here, besides the slave castes of Malabar, there were various ways by which even high caste men and women were condemned to slavery, of which adultery was one and loss of caste another (3). The result was those of the higher castes who were reduced to the position of a slave became the property of the Kings of the land (according to the laws and customs of Malabar) who, like the Zamorin, sold them either to the Moors or Christians and thus the converts from all castes swelled the ranks of the Moplas.

Secondly, the Muslims, though they had no regulated system of priests and missionaries, yet carried on conversion on a large scale, for every Muslim trader was at heart a missionary. They purchased

(1) In the words of Van Linschoten, who visited Cochin in 1584 translated into English. See the Indian Review. Vol. XIV, No. 2, February 1913. *The Jews in Cochin.*

And one learned writer remarks : " The Christians, like the Jews, *were incorporated into the Malayali people*, and the position assigned to them and the jews was that of a practical equality with the Nairs of the Six Hundred of the *Nad* .....Thus the Syrian Christians were a flourishing community on the West Coast of Southern India and were numbered among the nobler races of Malabar,"

(2) As noticed elsewhere, there was slave trade in Malabar from early times until the practice was stopped during the British administration.

See also the Reports of a Joint Commission, 1792-1793, Vol. I, p. 7. " During this period also the Mahomedan religion made great progress in Malabar, as well as from the zeal of its more early proselytes in converting the natives, *as in purchasing or procuring the children of the poorer classes, and bringing them up in that faith.*

(3) See Tohfut-ul-Mujahideen, footnote, p. 67.

slaves and made them Muslims, they contracted alliances with women of the country and made them and their issue Muslims, for no Muslim would marry a Hindu girl unless she first embraced Islam.

Among these converts to Islam there were no doubt many from the lower ranks of Hindu society whose conversion cannot be said to be free from interested motives of a temporal character. Thus the conversion of the Cherumans, the Mukkuvans, and others was effected, because entering the fold of Islam meant to them a distinct gain. In the words of Mr. Greame (referring to the lower caste Hindu convert). " He is no longer a link in the chain, which requires to be kept in its proper place. His new faith neutralises all his former bad qualities. He is no longer the degraded Pariah whose approach disgusted, and whose touch polluted, the Hindu of caste, but belonging now to a different scale of being, contact with him does not require the same ablutions to purify it." Further these converts received every encouragement from their co-religionists for their livelihood. The rich Moplas usually gave a helping hand to them, not to mention other social advantager which they gained by such a step, for the Muslims as a rule are democratic in their outlook and their habits of daily life. Finally it is enough to observe that the part played by the sword of Tippu Sultan in the work of conversion is, as judged by the results, very meagre. It is said that even in Mysore, with all the alleged deportation of the Hindus, and the Christians *en masse*, only five per cent of the population are Muslims.(1)

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(1) See The Imperial Gazetter of India.

It is not generally realised how many converts to Islam have been made during recent times in Malabar by peaceful means. See Census of India 1921. See also The Imperial Census 1881. " The increase is most important in Malabar.....The extensive conversion to Muhammadanism of the lower caste Hindu in Malabar has been a matter of notoriety..... Conspicuous for their degraded position and humiliating disabilities are the Cherumars. Their caste numbered 99,009 in Malabar at the Census of 1871 and in 1881 their number is returned at 64,725. Nearly 50,000 Cherumars and other Hindus have availed themselves of the opening."

Tippu's alleged forced conversions to Islam is likely to leave somewhat of an exaggerated impression in the mind of the average reader. We do not propose here to advocate his cause, but the following points may be considered as throwing some light on the point. (1) It is proved from the Tellicherry Factory Records and the Reports of a Joint Commission of 1792 and 1793 both original sources of great value on the history of the period—that Haidar did not attempt to convert the Hindus in Malabar. (2) Many of the Brahmins, the Nayars and the Rajas of the land-owning classes ran away to Travancore on the approach of Tippu; "and that, Tippu (if at all he did convert) always aimed at the high class Hindus. (3) It must be remembered that many among Tippu's revenue officials were Canarese Brahmins and the Prime Minister himself was a Brahmin."

See Malabar and Its Folk by Gopal Panikkar, pp. 270-271.

CHAPTER II

THE LAW OF THE MOPLAS: ITS ORIGIN.

It will be seen from the foregoing sketch, that a great majority of the Moplas are converts from the indigenous inhabitants of the country and that the bulk of the Mopla community, although at first it had a considerable admixture of Arab blood in it, has nowadays but a small such admixture. Let us now proceed to consider how the Moplas who followed Marumakkathayam when they became converted to Islam, have continued in the main to conform to it to the present day, while those who originally followed Makkathayam or Muslim Law are even now governed by the latter. In other words, on conversion to Islam the Moplas of North Malabar did not change their laws and customs all at once and take to Muslim Law as is alleged by certain writers, but continued to be governed by the customs and laws to which they had been accustomed for generations past; and that although Muslim Law has affected these customs to a certain extent, its effect is not so all-pervading as is sometimes imagined. For this purpose let us first state our case in as brief a manner as possible. Let us then state the other view in some detail and mention all the points that have been urged in its favour, and next discuss as to how untenable the theory is in the light of a comparative and sociological study of the subject.

OUR THEORY AS TO THE ORIGIN OF THE LAW OF THE MOPLAS.

First of all the heathen Arabs, originally and the Muslim Arabs later on, did not bring their women with them when they settled in Malabar, but married the women of the country. Like the Arabs of the Malay Archipelago, they very soon got absorbed in the people of the country, so that they and their descendants became part of the indigenous races of Malabar, and the Arab priests, being very tolerant, converted the people of Malabar without any regard to what they actually practised (except in the essential matter of faith in God and acceptance of Muhammad as Prophet) so much so that instead of making the converts profess Muslim Law they themselves adopted the local practices in many respects; thus they

eventually became one with the native population. The Moplas or North Malabar follow Marumakkathayam Law to-day because theif ancestors have been governed by it from time immemorial, while on the other hand, the Moplas of South Malabar follow Muslim Law because for generations their forefathers have been following Makkathayam rule of law which they retained on conversion to Islam.

Firstly, the Moplas of Malabar in many respects, even to-day, very resemble the other inhabitants of the district. Mention may be made here of the fact that among the 'Pollution Castes' or the untouchables of Malabar—the Tiyyans, Mukkuvans and others—there is a distinction between the people of North and South Malabar; the former as a rule are governed by Marumakkathayam principles and the latter by Makkathayam, as also are the Cherumans of South Malabar, and that, as a matter of fact in recent times, the latter caste has furnished a very large number of converts to the ranks of Islam.

There was, for instance, a notable increase between the years 1871—1881 A. D. It has been already shown that large numbers of the low caste Hindus, mostly Cherumans, embraced Islam and taking into account the fact that the poorer classes everywhere are more prolific than the rest, one can easily understand why the Mopla population has increased of recent years by leaps and bounds. The centre of this activity has been mainly in the south, either in 'the Mopla area' of Ernad or Walluvanad taluqs, or in the towns of Calicut and Ponnani; hence it is that the Mopla population of South Malabar is much greater than that of North Malabar.

Again, as pointed out elsewhere the lower castes of South Malabar are all Makkathayam and let us consider for a moment as to what is meant by that term. The lower ranks of Malabar are very poor and live mostly from hand to mouth. The Cherumans, for example, were slaves of the soil, hence they had no rule of inheritance worthy of the name for they had no property. Therefore the word Makkathayam when applied to these castes only means that the wife lived with the husband, who had also control over the children, and when the Cherumans became Muslims and secured their personal liberty and began to acquire property, the rule of inheritance came to be according to Muslim Law, because it too prescribes that wife and children should live in the home of the husband and father. Many of them were agriculturists by profession, and as some form of joins family life is more favourable to agriculture, they very often formed village communities of their own of the type peculiar in Malabar, and they even now very often live jointly, although on this account they cannot be said to follow the Hindu Law. As regards the Moplat

following Marumakkathayam it is well-known that the Tiyyans and Mukkuvans and the Nayars in North Malabar from whose ranks many of the Muslims derive their origin (as referred to elsewhere) are all Marumakkathayam castes, and hence when they became converted to Islam, they continued to follow that same rule of law.

Marumakkathayam Law—a Product of the Social Conditions Prevailing in Malabar.

Now it is well known that the Nayars were a land-owning class, so also the Tiyyans, who, though not as rich as the Nayars, we not as poor as the Cherumans. Hence being possessed of property and following the rule of Nepotism when they became Muslims, they did not adopt Muslim Law completely all at once, for as we have attempted to show previously, it is impossible to do so in practice, whatever may be said in theory, because the Moplas of North Malabar, who were the natives of the land, were the products of the place and time in which they were born, so different from the social conditions prevailing in Arabia that the laws and customs of the latter could not be expected to suit all at once a people so much opposed in their lives and outlook from the wandering Arabs of Arabia. The Moplas of North Malabar were agriculturists; whereas the Arabs were nomadic; the Arabs were poor, whereas the Moplas were rich; the Arabs belonged to the Semitic race, whereas the Moplas were mainly Dravidian; the Arabs lived in a land where peace and security were only ideals which were hardly if ever realised, whereas the Moplas, even in early times, had often an efficient system of administration of justice which secured them peace. Hence, even though the Moplas of North Malabar adopted Islam as their religion, it was impossible for them to break completely and immediately with all the many social ties which bound them to their customs and laws, and to adopt at one stroke, as it were, Muslim Law in all its entirety and intricacy.

Besides, judging from the work of conversion to Islam in other lands, it is evident that the early missionaries were tolerant and were always prepared to make great concessions to people who accepted their faith. In China, in Malaya, in Sindh, and in the wilds of Africa, the same principle is observable; if the intending convert will subscribe at least to the Kalima (the cornerstone of the Muslim faith), viz., "There is no God but God and Muhammad is his Prophet," in many cases it was enough. The rest did not matter, and so with the tolerance of the Muslim preachers on the one hand, and with the deep-rooted nature of the local customs on

the other, there was practically no difficulty about the retention by these converts of their own laws and customs even though they were so different from the law of the religion they now professed (1).

Further, as has been said elsewhere, that instead of the converts adopting Muslim Law the Arabs themselves who had settled amidst them adopted Marumakkathayam, and here the case of the Tangals is in point. They are of Arab extraction. Yet, strange as it may seem, although they are the religious heads of the Moplas and "great sticklers after the strict observance of the religious rules laid down in the Koran," as a rule they follow Marumakkathayam with reference to their family property and the devolution of their priestly office.

The Customary Law in the Laccadive Islands.

Let us conclude this part of the subject by mentioning one more instance to illustrate our theory. According to tradition the Laccadive Islands seem to have been first peopled during the period that immediately followed the conversion of the inevitable Cheraman Perumal to Islam. Whatever may be the truth as to this legend, this much is certain that there has been a voluntary immigration, especially of the lower classes, from the coast of Malabar and some of the Islands are reported to have been first occupied. In the first four of these islands(2) the higher classes even now claim to have descended from Nayar(3) families on the main land and hence they are known as Tarawad Islands as distinguished from otherr or Melacheri islands. The Melacheries are chiefly composed of the lower classes mostly Tiyyars and Mukkuvars, who first colonised the larger islands as servants of the superior classes, and they also settled exclusively on Agathi and the smaller islands. They were all originally Hindus, who somewhere about the fourteenth century A. D. became converted to Islam owing to the influence of Arab traders, and they have ever since staunchly adhered to the Muslim faith. But at the same time they follow the rules of Matriarchy even more rigidly than their co-religionists in North Malabar. Now there is one aspect of the Muslims in the Laccadive Islands (as well as of the Muslims in the Malaya Archipelago)(4) which we will like to emphasise here. These islands are separated one from the other by the sea, and are more than a

(1) See Sundaram Iyer's *Malabar and Aliyasanthana Law*. p. 231.

(2) The reference is to Ameni, Kalpeni, Androth, Kavarathi and Agathi.

(3) Some even claim descent from Nambudri Brahmin families.

(4) In Sumatra and in the Malay Peninsula a great majority of the people are Muslims following the rule of matriarchy as do the Moplas; and they are also

hundred miles away from the Malabar coast, and hence, unlike what happened in Malabar, the people who embraced Islam in these Islands did it *en masse*, while in Malabar Islam never secured the adherence of even a bare majority. Hence the argument which we will state at some length presently that the Muslim converts re-adopted their native customs and laws on account of the influence exerted on them by the surrounding inhabitants cannot hold ground regarding the Moplas in the Laccadive Islands. For once the Muslims here having adopted Muslim Law as a whole and applied it to such matters as inheritance, there would have been no social pressure on them and no inducement to them from the example of neighbours to go back to the abandoned rules of matriarchy. In the light of the above observations and in view of the fact that the customary law among the Moplas of these Islands preponderates so largely over the personal law, it is merely reasonable to conclude that the Moplas in these Islands did not change their laws when they changed their religion, but that they have continued to be governed by their own customs in preference to Muslim Law. And, arguing from analogy, the same inference should be drawn about the Marumakkathayam Moplas on the main land.

Most of the early Muslim Colonists were Ignorant of the Muslim Law

In this connection it may be mentioned very briefly one or two outstanding characteristics of religion and law with special reference to its early phases. Islam spread to India and to the Malay Archipelago in the course of several centuries beginning from about the ninth century A. D., and by the end of the fifteenth century of the Christian era it had established itself strongly both in India and elsewhere, and now it will be observed that the early emigrants from Arabia were not all of them cultured Muslims learned in their laws. Furthermore what Van Den Berg observed in the nineteenth century

Shafi Muhammadans and great observers of the cardinal principles of the religion of Muhammad, but at the same time nowhere does customary law hold the ground more tenaciously than in these countries. Except in the matter of marriage, dower and divorce, custom reigns supreme in the Malay Archipelago. In the words of Martin Lister (speaking about the Malaya of Negri Sembilan in the Malay Peninsula) "All cases nearly are settled by custom *adat*.....With reference to property, Mahomedan law is only brought in as a last resource, if *adat* is insufficient for the case at issue." (See Journal of the Straits Branch of the Royal Asiatic Society, 1887—1889, No. 19. p. 49). Now it must be remembered that the Archipelago (like the Laccadive Islands) consists of a group of islands separated one from the other by the sea and the people who embraced Islam in these Islands, especially in the Menangkaban district of Sumatra did it *en masse*, or at any rate, a great majority of them became Muslims.

was almost certainly a repetition of what went on the ninth and had been going on ever since. Most of the colonists and merchant adventurers to Malabar and Malaya who left South Arabia to seek their fortunes abroad were not learned in law or theology, but were common place men, hewers of wood and drawers of water, whose acquaintance with the rules and laws of their religion is likely to have been somewhat slender. Hence when they settled in foreign lands, in a good number of cases, they adopted the laws and customs of the people among whom they settled, and became part of the native population. As in the Punjab,(1) so in Malabar, the average Arab knew little more of his own laws than the pagan Malayalees. (2) This is the conclusion that follows from what has been said of the nature of the Arab emigrants to Malaya in the latter part of the nineteenth century.

Among the Muslims those who follow some Non-Muslim system of law may be classified as follows:

(1) Muslims who have adopted local customs out of ignorance, as in the Punjab.

(2) Muslims who, having been governed by their customary laws from time immemorial, could not change them all at once in favour of the Muslim law, like the Moplas and Malays.

(3) Muslims who in course of time have in many ways adopted the rules of Muslim law in preference to their customs. (3)

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(1) "Neither the original Muhammadan invaders...nor the local convert; though often fiercely religious, had any knowledge of the Muhammadan law, nor, indeed; if they had, would they have been likely, as landholders to follow it accurately.....The villagers usually follow their own custom and imagine that it is the Muhammadan law." *The Indian village Community*, B. H. Baden-Powell, pp. 219-220. We are informed by Dr. Blagdon (Reader in Malay, London University) that the Muslim Malays also "follow their own custom and imagine that it is the Muhammadan law."

(2) See Baden Powell. re: Punjab Muhammadans. *The Indian Village Community*.

See Perry's Oriental Cases, 110, p. 113 Re: The Khojas of Bombay.

As to the Moors in Fuquien in the Far East, see the following quotation from Hobson Jobson C. 1560:

"When we lay at Fuquien, we did see certain Moores who knew so little of their secte that they could say nothing else but that Mahomet was a Moore, may father was a Moore, and I am a Moore."—P. 446.

(3) These represent all the communities, beginning from the Malays on the one hand, who can be scarcely said to have begun giving up their customary law, and ending with the Labbays of Coimbatore, who are to-day governed by Muslim Law, although till quite recently they were following the rules of Hindu law in one particular, viz. the exclusion of women from inheritances

Reasons for this Diversity among Muslims

The reasons for this diversity among the peoples of the Muslim world are many. Among the causes may be mentioned:

Firstly, the effect of Muslim Law itself on the community in question which has adopted this law; for there is always a pull towards the law of one's religion, and in many cases Muslim Law also has influenced custom. Therefore taking a bird's eye of all the Muslims in the world, it will be found that each Muslim community represents in its own way its particular stage of human evolution in the field of Muslim Law; from those who do not follow Muslim Law at all (except in one or two porticulars) to those who observe every rule of it.

Secondly, it may also be mentioned here the effect which Judge made law and statute have had in the development of Anglo-Muslim Law. It is needless for us to state that prior to the British administration, Muslims were the rulers of nearly all India, and under a Muslim Government, it is probable that customs sinning against the 'Shariat' could not meet with any favour,(1) as appears to be the case to-day in a small country like Afghanistan. But when British Rule began, the English administrators wisely took a neutral position in the matter of personal religion and laws of the parties, and in almost all cases (except in Bengal) enforced custom in preference to the bare laws of the religions of parties. And the point of importance here is that this worked both ways. On the one hand the Courts enforced the customary rules which the people had retained, and at the same time it had the effect of stereotyping those customs on the community following them. In this connection we could not do better than quote Mr. Justice Beaman, who makes the following forcible observations on the subject with reference to the Khojas of Bombay in the case of *Jan Mahomed* v. *Jaffer* (38 Bombay, 449). "It may now be confidently asserted that whether or not the Khojas and Memons of this Presidency had in 1847 adopted customs based on the law of the Hindu joint family, had those customs not been rather hastily, as I cannot help thinking, stereotyped by judicial decisions, they would long before this, with the expanding commercial prosperity and industrial enterprise of these peoples, have been utterly repudiated and abandoned. But a course of decisions beginning with the Khojahs' and Memon's case,..... soon rivetted the fetters of the law af the Hindu joint family upon these and later other Mahomedan groups in this Presidency."

See *Sheikh Ibrahim Rowthen* v. *Muhammad Ibrahim Rowthen, 67 Indian Cases*, 115. (1922). The Moplas of North Malabar may be ranked under any one of these groups: for what applies to one community like the Punjabis or the Khojas will also in many cases apply to the Moplas or Malays.

(1) We are informed by the Afghan Legation at London that the Muslim Law is the invariable rule of decision in Afghanistan to-day. We are also

Thirdly, in countries like Malabar there is this additional factor to be considered. Malabar is a country shut in by mountains and impassable forests on one side, and the sea on the other, and it has been always ruled by Indian Rajas and Chiefs until the British acquired it from Tippu Sultan in 1792-1793. But for the short interregnum of about a quarter of a century during the reign of Haider Ali and Tippu, Malabar has never been under Muslim rule.(1) The Moplas from the earliest times were governed mostly by pagan kings who did not interfere with the laws and customs and religion of their subjects. For this there is ample authority, and the author of Tohfat-ul-Mujahideen mentions it explicitly, as do many other writers on the subject. It is undeniable that administration of justice in Malabar prior to British rule was very largely local; the system of Government, as has been mentioned previously, was throughly feudal after the manner of the Continental system of feudalism of the middle Ages in Europe, hence the Moplas, who were the natives of the land, were divided into local, military, and administrative divisions of Taras, Nads and Desams.(2) And the person who administered justice over them was the Kazi or Judge attached to the local Mosques which were to be found all over Malabar. (3) The Kazi, himself a native of the land, dispensed justice(4) with the help of the men of the locality who were also indigenous inhabitants of the place. With but rudimentary knowledge of Muslim Law, these local Courts scattered all over the interior of North Malabar did know from daily contact with it the rule of Nepotism which they and their forefathers had followed for generations,hence their decisions were likely to be in accordance with local custom. For this reason it is that in North Malabar there were Moplas as late as the sixteenth century, who although observing in an orthodox manner and in detail all the rules of their religion, in matters of law, were as pagan as the pagans themselves, and here it is well to remember that the only Mopla chieftain in all Malabar, the

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informed by Professor Ostrorog. of the University College, London, that prior to the revolution in Turkey, there were no customs opposed to Muslim Law which the Turkish Courts recognised.

(1) See R. Mukerji's *Democracies of the East*, p. 225.

(2) See R. Mukerji's *Democracies of the East*. pp 224, 225, 227.

(3) It may be remembered that during the period with which we are concerned here the means of communication in Malabar were not so well developed as they are to-day.

(4) A word may be said here with reference to the state of the Muslim jurisprudence in the eighth and ninth centuries. Muslim Law in those early days may itself be hardly said to have evolved to what it is now. Even the division of the four schools of Muslim Law was just beginning to develop. One is likely to misjudge the state of Muslim Law of the ninth century A. D. with the development it attained in the subsequent centuries.

Ali Raja of Cannanore, who was the political head, as it were, of the Moplas of North Malabar, had retained the rule of succession by the sister's son in his family; (1) and thus the other Mopla families, the rank and file, would not have for a moment hesitated to follow his august example. Just as in North Malabar the influence of the Ali Raja's family is likely to have influenced the Moplas to follow their ancient customs, so in South Malabar the influence of Valiajarathingal and Makhdum Thangal of Ponnani—the religious leaders of the Moplas, would have also to be taken into account in constructing a theory on the subject. These latter were of Arab parentage, "descendants of the Prophet," the upholders of Muslim religion and Law; therefore their presence would not have been without its effect on the Moplas of South Malabar, (2) and accordiagly the latter followed Muslim Law. And even here, in some places like Calicut, Ponnani, etc.—practically all along the coast—traces of Marumakkathayam still prevail.

Internal Evidence to show that the Moplas of North Malabar have retained the Marumakkathayam.

Now to continue our subject; so far an attempt has been made to show from external evidence all that appears to us to bear upon the view that the Moplas of North Malabar have been following Marumakkathayam Law before, during, and after the conversion to Islam. We will now consider in the subsequent pages that besides external evidence there is also internal evidence which seems to lend weight to our view, and let us do this with reference to (*a*) the fact that the Moplas practically follow Marumakkathayam Law in almost all matters, (*b*) the rule as to self-acquisitions, (*c*) the rule as to the devolution of certain priestly offices in Malabar.

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(1) It may be pointed out here that none of the early writers on Malabar even down to Buchanan (so far as we have observed,) refer to the division among the Moplas, viz., North and South Malabar. In other words, there is no distinction drawn between Marumakkathayam Moplas and Makkathayam Moplas as we find them to-day. Sheikh Zynuddin indeed makes mention of the Moplas in and round about Cannanore as following Marumakkathayam but he does not say that the Moplas in other parts do not follow the rule of Nepotism. Considering the accuracy and detail with which travellers like Duarte Barbosa have observed and recorded the social conditions in Malabar, it is not likely that they will have omitted, this glaring fact, if it existed in the past. Probably these writers only took account of the Moplas, particularly the land owning class, who were mostly Marumakkathayam both in North and South Malabar including the holders of religious offices like the Tangals.

(2) It will be observed that these Tangals follow Muslim Law so far as the devolution of their private or self-acquired property is concerned as distinguished from their religious offices, which are governed by the rule of Nepotism. See Major Holland Pryor *Moplas*. pp. 36.

THE MOPLAS OF NORTH MALABAR FOLLOW MARUMAKKATHAYAM LAW TO A LARGE EXTENT.

The wide extent to which the Moplas of Malabar are governed by Marumakkathayam will be seen from the subsequent pages. As a matter of fact, excepting the Law of Marriage, dower and divorce, and the later developed rule as to self acquired property and the law of wills, the Moplas follow in all other respects local customs in preference to Muslim Law.

From this it appears that the base of the Law of the Moplas is Marumakkathayam, and that Muslim Law is only a later accretion. The community which to-day follows local custom to so large an extent cannot be said to have adopted all those customary rules on account of foreign surroundings and influences ; one could very well understand if it is said that people following the Muslim religion have subsequently adopted a few rules of their neighbours on account of their contact with them. But when almost a whole system of law is followed by a Muslim community, it is evident that it could not be the result of later adoption, especially if we remember the hold that Muslim religion and law has on a community which has once completely adopted it ; therefore it is but reasonable to presume that the converts did not change their laws as they changed their religion but continued to be governed by local customs in spite of the adoption of Islam as their religion.

THE CONCLUSION TO BE DERIVED FROM THE DEVELOPMENT OF THE RULE AS TO SELF-ACQUIRED PROPERTY.

We are strengthened in this conclusion from what we observe with regard to the history of the rule with reference to the devolution of self-acquired property in the Law of the Moplas. In brief it is this; in the sixteenth century we find that only half of the self-acquired property of a Mopla devolved according to Marumakkathayam Law. Later on a custom grew up by which the whole self-acquired property of a Mopla went in accordance with Muslim Law, which is the rule to-day, and we know that according to the true principles of Marumakkathayam Law, the rule is if a man were to die intestate all his self-acquired property is inherited by his Tarwad, viz., the matriarchal joint family. In the Mopla Law, however, we do not know what was the rule actually followed with reference to the devolution of self acquired property before the sixteenth century, but we know definitely the latter part of its history. It appears to us that prior to the days of Duarte Barbosa (early sixteenth century) the rule is likely to have been in accordance with Marumakkathayam principles; that is originally the whole self-acquired property of a Mopla devolved on his Tarwad. Owing to the influence of Muslim

Law and as a compromise between orthodoxy and local custom, the rule came to be what we find in the sixteenth century, viz., half the self-acquired property descended according to Marumakkathayam Law and half according to Muslim Law.

And as centuries rolled by and the Moplas became better acquainted with the Islamic religion and laws, they developed the later custom of following the Muslim Law of Inheritance, at least in one particular in the matter of self-acquired property. It will be observed that the move has been all towards Muslim Law. On the one hand was their religion making a strong appeal against heathen customs; on the other were those customs from which there was no easy escape. Torn between these opposing forces, the Marumakkathayam Moplas of Malabar very often found a way out by such compromises as indicated above. But if we take the other view, *viz.*, that the Moplas adopted on their conversion both Islamic religion and Muslim Law completely and later re-adopted Marumakkathayam, it would, we venture to submit, be difficult to explain in a reasonable way the development of the rule we have just been considering. After having once adopted Muslim Law and then re-adopting Marumakkathayam Law, we do not see why the Moplas should again adopt some part of Muslim Law. It would only be running in a vicious circle. If our view is adopted the progress of the rule would appear to have a 'method in it;' a scientific principle is observable in the growth of the custom and everything 'hangs well together.'

INFERENCE TO BE DERIVED FROM THE RULE AS TO WAKFS.

Lastly, let us take the rule with regard to Wakfs. Among the Moplas certain religious offices like those of Tangal or Makhdum devolve according to Marumakkathayam; this rule if it prevailed only in North Malabar is a fact that could be explained away, but it also prevails in South Malabar where Muslim Law fully holds the ground. What is more strange, it is the rule that prevails in the family of the High Priest of the Moplas in Ponnani, *viz.*, the rule of succession by the sister's son. Now let us apply to this phenomenon the other view of which Logan(1) in Malabar and Justice Beaman(2)

(1) (*a*) W. Logan, Malabar Manual, p. 275 (1906.)
(*b*) See also 22 Mad. 494. at p. 505 (1897.)
(*Assan* v. *Pathumma.*)
To quote Justice Subramanya Ayyar and Justice Davies.
"Now there can be no doubt that even in the case of Moplas of North Malabar the Muhammadan Law, as the law of their religion and their original law is their general law, the Marumakkathayam rules in regard to Moplas who follow them being rules, of later adoption (Logan's Manual, Vol. I.. .....) and forming so far as they go in the case of such persons, exceptional rules modifying the general law."
(2) *Jan Mahomed* v. *Datu Jaffer*, 38 Bom. 449 at pp. 460-462 and 474 (1913.)

in Bombay are the staunch advocates. According to them, these Moplas, on conversion to Islam adopted the Muslim Law completely and re-adopted Marumakkathayam Law later on. Therefore, from their point of view, the religious offices too may be said to have been originally governed by the principles of Muslim Law. Here we should like to point out that change to Marumakkathayam from Muslim Law is not likely to happen in the case of religious offices as anyone acquainted with Muslim Law and religion would know; however, let us for purpose of argument take this also for granted. How then will the advocates of this theory explain the fact that in South Malabar the Moplas follow Muslim Law in all other matters except in the matter of certain religious offices? On the face of it the theory is untenable, because it cannot explain why the South Malabar Moplas, who were also the indigenous inhabitants of the country should follow Muslim Law. If the contention be that the adoption of Marumakkathayam was the result of the surrounding influences, it may be asked why the Moplas of South Malabar who were also in the midst of the Marumakkathayam Nayars should follow Muslim Law. Here, the observations of Mr. Justice Kumaraswami Sastri (as he then was) seem to us to be very relevant. He says referring to the Cutchi Memons of Bombay: "I do not think there is much force in the argument that when the Cutchi Memons became converts to Muhammadanism they adopted Muhammadan Law in its entirety and then began to graft on it rules of Hindu Law at variance with the law of the religion and that this process stopped with the simple process of succession and inheritance. It is remarkable what a strong hold the joint family system had on the community and how converts to Muhammadanism have clung to and lived and traded together even though they in other respects conformed to the Law of the Koran. The Mappillas of Malabar, whose ancestors were Hindu converts to Islam have adopted the system of owning tarwad property and are governed by the rules of the Marumakkathayam Law as regards tarwad property".(1)

Now let us proceed to state the opposite theory as to the origin of the Law of the Moplas. The arguments urged in favour of it even by its ablest advocates, if analysed, amount at best only to this:

Firstly, the Moplas could not have adopted more than one or two rules of Marumakkathayam Law at most on account of the influence of their surroundings.

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(1) See *Sidick Hajee Aboo Bucker Sait* v. *Ebrahim Hajee Aboo Bucker Sait*. 70 Indian Cases. 715 (1920), pp. 726-727.

See also Lewis Moore, *Malabar Law & Custom*, pp. 324-325.

Secondly, the Moplas, on the flush of their canversion and in their zeal for the new religion, completely adopted both Muslim religion and Muslim Law.

Thirdly, as time went on, their zeal for their religion cooled down and hence they adopted only one or two rules of Marumakkathayam Law on account of contact with their Hindu neighbours.

Fourthly, these communities would have dropped these customs that they borrowed from their Hindu neighbours long ago but for the fact that the early decisions of British Courts somewhat hastily jumped to the conclusion that the whole law of Marumakkathayam joint family is applicable to them and thus stereotyped and clamped, as it were, these Hindu customs on the Mopla community.

In the first place the supporters of this theory, we venture to submit, do not give any authority for their premises, which are simply their personal opinion with no historical date to support them. For example, let us take the contention that the Moplas like the Khojas and Cutchi Memons of Bombay (and other Muslim communities in India similarly situated) gave up their original laws as they changed their religion on conversion to Islam; it will be observed they have no proofs to offer for this proposition while, as a matter of fact, it is well known historically that these communities, for instance, the Khojas were converted in the fifteenth century by Pir-Sadr-Din who gave them the "Dasavathar", the Koran of the Khojas (a curious mixture of Hindu and Muslim tenets (1) of faith), which they have continued to follow ever since.

In the previous pages most of the ground has been traversed in respect of the theory we are now considering. Regarding the remark that the new converts on the flush of their conversion broke away completely with the past, it is enough to observe here that in actual practice it is hardly likely, for it is contrary to facts. Conversions to Christianity and Islam are being made in india and elsewhere even to-day among the people, who cling to their laws and customs for various reasons inspite of a change of religion; as will be seen from the following instances. To begin with there are in Travancore (in the taluk of Neyyatinkara) a few Christians who follow the system of Marumakkathayam. They are converts from the Hindu Ezhava caste and most of them belong to the Roman Catholic faith. In the words of the Travancore Christian Committee—"They seem to be in fairly well-to-do circumstances. They retain all the

(1) Here it may be observed that the "doctrines which enabled Pir-Sadr-Din to combine Hindu and Moslem theology were peculiar to the Ismaili sect. This should be noted in comparing them with the Malabar mixture of orthodox Shafi law and custom."

social customs observed by their unconverted caste men. Hindu Ezhavas and Christian Ezhavas freely intermarry. The marriage is, however, solemnized in the Church only if both the parties are Christians. In other cases there is only the usual *sambandam*. It is said that divorce is not permitted to parties married according to the rules of the Church. In the same tarward there will, sometimes, be found members who are Christians as well as those who retain the old Hindu faith. Conversion to Christianity does not incapacitate a person from becoming the karnavan of the tarwad or from taking part in family partitions. Similarly, conversion does not affect a member's right to sue for the removal of an improper karnavan from office, or for the cancellation of documents improperly executed by the managing karnavan.....It is enough to say that they observe the Marumakkathayam Law obtaining among the Hindu Ezhavas whereby a moiety of a man's self-acquisition goes to his children while the remainder goes to his Anandravans. In other respects, they follow the ordinary Marumakkathayam law. They do not desire to have their existing usage in this matter changed in any way."(1)

Finally, there is in Tellicherry a Nayar tarwad known as the Muthur Tarwad. It comprises of four Tavazhis—(1) Mutur Keloth, (2) Mutur Thripra, (3) Muthur Purakott and (4) Cheria Muthur. We are at present directly concerned with the third tavazhi; (Muthur Purakott) members of which live in two houses (*a*) Purakott and (*b*) Palliath. What happened was all the descendants of a female member of the Muthur Purakott Tavazhi, one after another, embraced Islam. All the converted members live in Palliath House, while the Hindu members of the Tavazhi occupy Purakott House. But for this separate residence and maintenance of the Muslim members, in most other respects, the Muslim section of the Tarwad still follows Marumakkathayam; and, in fact, the Karnavans of the main tarwad and of the tavazhi to which the Muslim members belong consist of their own unconverted Hindu kinsmen. Instances may thus be multiplied where a change of faith seldom effects a radical change in the habits and usages of the converts. And it is needless to add that what is observed to-day is likely to be only a repetition of what took place centuries ago.

(1) See the Report of the Christian Committee (Travancore) (1912), Page 50, paras 276 and 277.

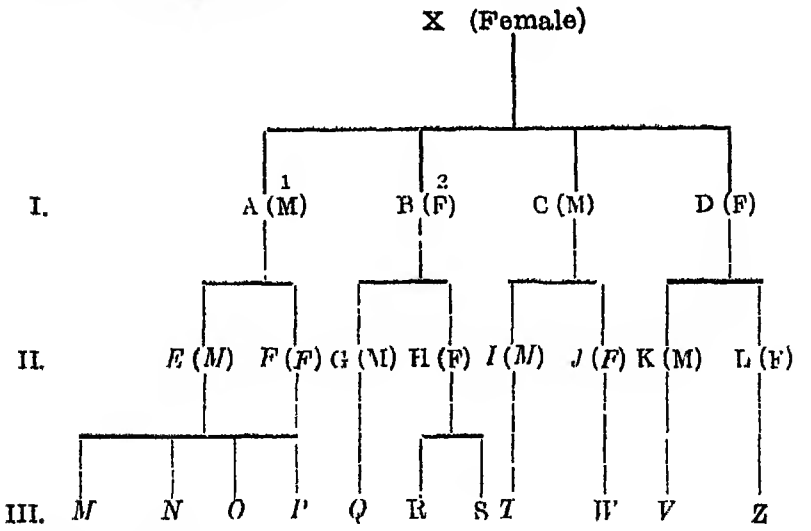
CHAPTER III

MARUMAKKATHAYAM LAW

SECTION I—THE TARWAD.

For understanding clearly the Customary Law of the Moplas it is necessary to have a general knowledge of Marumakkathayam Law which applies to the Hindus in the South-West coast of India. Among the people governed by this law, the Tarwad is the social unit.

A Tarward is a group of individuals all claiming descent from a common female ancestress in the female line. Given X, a female, her children, grand-children (*i.e.*, children of her daughters only) and great grand-children (*i.e.*, children of her daughters and grand-daughters and so on in the female line only) will constitute a Tarwad.



(1) (M) = Male.

(2) (F) = Female.

The letters in Italics repre ent all the descendants of X who do not belong to the Tarwad of X, being the descendants of males

The above table will make our meaning clear.

(1) Taking X as the common ancestress, the Tarwad of X will consist of all the male and female children of X, viz.. A, B, C and D.

(2) At the next step only those grand-children of X who are descended from her daughters B and D, *viz.*, G and H, K and L, will belong to the X Tarward, while the descendants of A and C, the male children of X, viz., E and F, I and J do not belong to the Tarwad of X.

(3) As regards remoter issues only the children of the grand-daughters (*i.e.*, daughter's daughters) of X will belong to the Tarwad.

Each smaller group within the Tarwad, claiming descent from a single female member in the Tarwad in the female line, is called a Tavazhi (*i.e.*, mother's line). Thus, in our illustration, X and her children will by themselves constitute a Tavazhi. They will belong to the Tavazhi of X and also to the Tarwad of X. A, being a son of X, his progeny do not count so far as their relations with the main Tarwad go. B, being a daughter, she and her children and grand-children will constitute a Tavazhi *viz.*, the Tavazhi of B. They will also be members of the Tarwad of X. Again C, being a male member, cannot be a stock of descent. But D and her decendants will constitute a Tavazhi. (1)

The head of the Tarwad is called the Karnavan (senior) and is the eldest male member of the family. (2) The junior members of the family are known as Anandravans (Juniors). Thus, taking members in the Tarwad, one of them will be Karnavan to the one below him in age, and Anandravan to the

(1) In this connection let us consider the constitution of a matriarchal family among Menangkabau Malays of the Padang Highlands in Sumatra who are also Muslims of the Shafi sect as the Moplas. To quote from Dr. Wilken ;—" From this it is clear that man and wife do not form a household. On the contrary the husbad continues to belong to his *suku*, his kinsfolk, and the wife with her children to hers. The family, therefore, does not comprise husband, wife and children, but only the wife or mother with her children. Accordingly, *samandai*, 'having one mother,' who are of the same mother', is the Menangkabau Malay word for'household'... ...So in the house of a Menangkabau Malay one finds, as a rule, a considerable number of persons collected ...children and their mothers, and further uncles, aunts, grand-mothers, great-uncles, and great-aunts, all, of course, on the mother's side. This group of relatives all inhabiting the same house, the Menangkabau Malay, with his matriarchal point of view, comprehends in the expression *Sa-buah parui*, literally, 'Who are of one womb. (*Papers on Malay Subjects*, (Second Series), By Dr. Wilken, p. 30.) It will be observed we have only to substitute the word "Tarwad,' for the word " Sa-buah parui', in the above description and the analogy between the two systems will be apparent.

(2) The practice to-day among the Malays of Menangkabau is similar to that prevailing in Malabar. " The head of the *Sa-buah parui*, the family, is usually the senior of the heads of the various branches of the family, the senior of the uncles on the mother's side, that is the senior *mamak*, who corresponds to the Karnavan of a Mopla Tarwad. He, however, bears the name of *tungganai penghulu rumah* or *tuwo rumah* (*Papers on Malay Subjects* : *p. 20 Dr. Wilken*)

one senior to him. In South Canara he is known as the Ejaman. In Malabar Law the term is always used to denote the manager of a Marumakkathayam family.

As pointed out before, within the Tarwad there are smaller groups, *viz.*, sub-Tarwads or Tavazhis. At the head of each Tavazhi is a Karnavan who must also be the senior most male member of that group. The incidents of the Tarwad will generally apply *mutatis mutandis* to the Tavazhi also.

The Tarwad (1) need not necessarily own joint property; in some cases, the members of the Tarwad may have no other property except the house they live in, while in others there may not be even so much. In such a case the word tarwad will indicate the residence of the members or only the relationship between them. Usually the members of the Tarwad live in the family house and also own family property, in which case the relation of the members is summed up in the expression "Mudal Sambandham", and "Pula Sambandham." The former means community of property, and the latter community of pollution (*i.e.*, it indicates the necessity of the members having a common interest to observe birth and death ceremonials.). Where there is no property-relation between the parties, they are usually said to have only a community pollution. When there is such a severance of proprietary relationship, each section forms a separate group known as *Attaladukom* heirs, *i.e.*, the heirs entitled to the reversion.

While the Tarwad as a whole owns joint property, the sub-Tarwad or Tavazhi may also own property which is exclusively its own. The members of the Tavazhi usually acquire an estate by way of gifts from their fathers; it is known as *Putravakasom* property in Malabar and *Makkathayom* in Travancore. The head of the Tavazhi becomes the "branch Karnavan" as regards *Putravakasom* property in respect of which the Karnavan of the Tarwad has no right to interfere.

The Karnavan for the time being is the most important person in the Tarwad. He is, as it were, the pivot on which the whole Marumakkathayam machinery turns, and is "the monarch of all he surveys," but his is a limited monarchy. He is the legal guardian of both the person and property of all the minor members in the Tarwad; he has absolute discretion as regards the distribu-

(1) In this respect the joint family in the Malay Archipelago furnishes a useful analogy. "The *harta pusaka* is under the administration of the head of the family,.....To this common property all, of course, have equal rights. But the men get only the use of a share of it, when the female tenants in common have had sufficient to provide for the maintenance of themselves and their children. For the chief object of the *harta pusaka* is to provide that female members of the family and their children shall be kept from poverty."

[See *Papers on Malay Subjects*, No. V, Dr. Wilken, p. 21, (Second Series.)].

tion of the family income, and he alone can represent the Tarwad in suits. He is entitled to the exclusive possession of all the family property, so much so that a junior member depriving him of such possession is liable to be convicted of theft, and if he goes about his work honestly and maintains the members of the Tarwad, his position in the Tarwad is secure. There are only two ways by which his powers can be curtailed ; he may submit to the resolu tions of the family council, in which case he is bound by the contract which is usually known as a "Family Karar." Or he might be removed at the instance of the junior members by a regular suit and by the order of a Court of competent jurisdiction.

The Junior members of the Tarwad have generally to obey the Karnavan so far as the management of the Tarwad affairs go. Their rights are usually summed up as follows:—

(1) To be maintained in the Tarwad house.

(2) To conserve the Tarwad property by preventing the Karnavan from making improper alienations.

(3) To take an equal share of the inheritence when there is a partition of the joint property, which cannot be done without the consent of all the members.(1)

(4) To bar an adoption.

(5) To succeed to the office of the Karnavan when his turn comes.

Among these rights the right to maintenance is the most important, considering that there is no right to individual partition.

The Tarwad is generally compared to a Joint Hindu Family. It is said that Marumakkathayam Law is only a branch of Hindu Law—an archaic form of it.(2) The difference, it is alleged, consists only in the rule of inheritance and the rule of impartibility. The Karnavan is usually compared to the father or the Manager,(3) of a Joint Hindu Family. It is true that the Karnavan most resembles the Karta or manager of a joint Hindu family under the Mithakshara Law; it is also true that the joint Malabar family resembles most the joint Hindu family. There is no harm in such comparison so long as it is kept within bounds.

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(1) The law on the subject is altered by the Madras Marumakkathayam Act—Act XXII of 1933.

(2) Krishnan v. Damodaran (1913), I. L. R., 38 Mad. 48, at page 64 (F. B.) Erambapalli Korapen Nayar v. Erambapalli Cheran Nayar I. L. R. 6 M. H. C. R., 411, at p. 414.

(3) Meenakshi Nethiar Amma v. Cheriya Parvathi Nethiar *74 Indian Cases*, 1012, at p. 1014 (1923).

Mankoothil Chathukutti Nair v. Konappan Nair, 44 *Indian Cases* 572 (1917), p. 578.

The important difference between the manager of a joint Hindu family and the Karnavan of a Tarwad consists in that the latter has somewhat larger powers of management over the property. The rule of impartibility gives to the Karnavan a power which is greater than that possessed by the *Karta*. Again the principles of pious obligations which loom so large in Hindu Law have no place whatever in the system under consideration as, for instance, the son's liability for his father's debts under the Mithakshara: further in a Mithakshara joint family the male is always the stock of descent, whereas in a Tarwad it is the female that counts. In a Malabar Tarwad no individual has a right to demand partition, whereas right by birth and right to partition are the two cardinal principles of a Mithakshara joint Hindu family.

Secondly, the Tarwad is compared to the Roman Family and the Karnavan to the Roman father or *pater familias*. It is said that "the Karnavan(1) is as much the guardian and representative, for all purposes, of the property of every member within the Tarwad as the Roman father or grandfather, (2)" and that the position of the Junior members in the Tarwad is precisely analogous to that of the members of the Roman family. Here again the analogy should not be pressed too far. The powers of the father in a Roman family were much greater than those possessed by the Karnavan, and as it will be seen elsewhere, however large his powers as Karnavan might appear to be, in reality they are very much curtailed by later usage, family-contracts, and judge-made law.

Thirdly, the Tarwad is compared to a Corporation with the Karnavan at its head. (3) But it will be remembered that while in a Corporation the rights and duties of its officers are regulated by votes, the rigths and duties of the Karnavan are not so determined.

The Karnavan and the Trustee or an Agent.

Fourthly, the Karnavan is sometimes compared to a trustee or an agent, which expressions only half reveal his true position. The position of the Karnavan is not one conferred on him by a trust or contract; he holds it by virtue of his right by birth. Besides, generally speaking, unlike the trustee or the agent he has a personal interest in the family property.(4)

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(1) *Malabar Law*. By Ramachandra Aiyar, p. 6, para 22. The Domestic Law of Kerala by Subramania Sastri, pp. 21, 22,

(2) Thathu Baputty v. Chakayath Chathu (1873) 7 M. H. C. R., 179, at p. 181,

(3) Vasudeva v. Narayana (1882) 6 Mad., 121 at p. 125.

(4) Varnakot Narayanan Namburi v. Vernakot Narayanan Namburi (1880), 2 Mad., 328, at 331 and 332.

Vasudevan v. Sankaran (1896), 20 Mad., 129 at p. 133 Kenath Puthen Vitill Tavazhi v. Narayanan (1904), 28 Mad., 182, at p. 195.

More than one writer has remarked that the Marumakkathayam Law has often suffered by wrong comparison. Their Lordships Chief Justice Morgan and Holloway, J. (the latter a great authority on Malabar Law) have expressed a similar opinion. In a suit for the removal of the Karnavan from his office, they observed "In such a state of property and family relations as that of Malabar there must be constant conflict of interest with duty. This, however, throws upon the Courts, in case of such conflict, the duty of checking acts referable to interest of that character, but it by no means justifies the treatment of the Karnavan as a mere trustee, officer of a corporation, or other person to whom he has been likened. The law in this case, as in so many others, has suffered from the pressing of a false analogy. The person to whom the Karnavan bears the closest resemblance is the father of a Hindu family. Like him, his situation as head of the family comes to him by birth."(1)

Having in mind the position of the Karnavan in relation to the Tarwad, we are in a position to discuss the theory underlying the Tarwad in relation to the Joint property. In the first place, it was once thought that the property of the Tarwad(both movable and immovable) vests in theory in the female members of the Tarwad, though in practice it vests in the Karnavan.(2) According to another theory the property vests in the head of the family, not merely as agent or principal partner, but almost as an absolute ruler, and it was said that "the right of the junior members is only a right to be maintained in the family house, so long as that house is capable of holding them."(3) Similarly it was said "in theory the property is held to vest in the females only, the males having the right of management and claim to support. Practically the males are co-sharers with the females."(4) Another theory, rather extreme in its view, is that the "females, as being the channel through which succession runs, are looked upon as vested with the property.....The male members have only the right to live and be maintained on the portion of the property which may be allotted to the share of their female ancestors."(5)

(1) Eravanni Revivarman v. Ittapu Revivarman (1876), 1 Mad., 153, at p. 167.

(2) Varnakot Naravanan Namburi v. Varnakot Narayanan Namburi, (1880), 2 Mad., 328, at p. 330.

(3) *Hindu Law*, By Mayne, 9th Edition, pp. 324, 325.

(4) *Hindu Law*, by Strange, p. 71, para 389.

(5) A. S. 82 of 1843, F. Anderson, referred to in G. Krishna Rao's ***Aliyasantana Law***, p. 49

Decree No 46 of 1851 (dated 28-9-1852), referred to in G. Krishna Rao's ***Aliyasantana Law***, p. 49, and in O.S. No. 13 of 1885, referred to in G. Krishna Rao's ***Aliyasantana Law***, p. 49.

See also Munda Chetti v. Timmaju Hensu, 1 M.H. C.R. 380, at p. 388 (1863).

Subbu Hegadi v. Tongu (1869), 4 M.H.C.R., 196 at p. 202

These views on Malabar Law are no longer held, the modern view being that both males and females are co-owners of the Tarwad (1) property and have equal rights. In the words of a learned writer in the Madras Law Journal "It is now well settled that all the members of a Malabar Tarwad are co-owners and all the talk about junior members having rights out of property and not in property are worn-out fallacies."(2)

At the same time the rule is the sole possession of all the Tarwad property as well as the right to manage it vests exclusively in the Karnavan for the time being.(3) "His possession no doubt is the possession of all in law so far as its effect on the title of the member is concerned, but nevertheless no junior member is entitled to take actual possession of any portion of the property without the consent of the karnavan."

In short, the true principles underlying the Tarwad may be expressed thus. The Tarwad is a group of individuals knitted together by the tie of descent from a common female ancestress in the female line and owning properties jointly and having as the mouth-piece the Karnavan; the members, in theory, have joint interest, joint possession, and joint ownership. The Marumakkathayam Law takes notice only of groups (either the Tarwad or the Tavazhi), and the individual as an unit with separate ownership and possession has no place in the Marumakkathayam system. In the words of Justice Holloway (in terms which express his true insight into Malabar Law,) "As in all Hindu Law, so in the archaic form of it which exists in Malabar, the first conception of family is of an indissoluble unity, a mere aggregate with no separate rights, living under one head, united more especially by their connexion with the same sacra."(4)

(1) S.A. 1505 and 1506 of 1888 dated 10-9-89.
S.A. 231 of 1891, dated 26-11-1891.
Both unreported.
See G. Krishna Rao's *Aliyasantana Law*, p. 51.

(2) 41 M.L.J., 161, Aug. 1921. Introductory Notes, p. 9
Mitavelil Kathutha Krishnan v. Vengan Thiruvattan,
Ayppu (1063 Tr.Cal.), 6 Tr.L.R., 49. at p. 51 (F.B.)

(3) *Malabar Law*, Ramachandra Aiyar, p. 5, Section 14.
Varanakot Narayanan Namburi v. Varanakot Narayanan Namburi, (1880), 2 Mad. 328, at p. 330.
Kalliani Amma v. Govinda Menon (1911—1082 Tr. Cal.). 35, Mad., 648, at p. 657.
Narayanan Padmanabhan v. Raman and three others. (1082 Tr. Cal.), 22 Tr.L.R., 318

(4) Erambapalli Korapen Nayar v. Erambapalli Chenen Nayar (1871), 6, M. H.C.R., 411 at 414.

SECTION II

The Karnavan.

As seen already the Karnavan is the principal person in the Tarwad; he represents the Tarwad completely, and in a sense it might be said that he furnishes the key to the Tarwad system. In Malabar only the senior-most male member in the family succeeds to the position of the Karnavan. This must be read with certain exceptions in the case of some sudra families and some royal houses known as Kovilagoms,(1) in which the senior-most female member in the family succeeds to the office, namely, the senior Thamburatti. In South Canara, however, the rule is now fairly well settled that the eldest member in the family succeeds whethermale or female.(2) In Malabar it will appear curious that, while in theory males and females are both regarded as co-owners of Tarwad-property, only the senior male is entitled to be the Karnavan. The modern practice in South Canara will appear to be more in harmony with the theory of joint ownership of both males and females. Even in Malabar the principle is that where there are no other male members competent to succeed, the eldest female takes the reins of office,(3) and where she does succeed she does so in her own right (4); the moment a male member becomes competent to hold office, she vacates it.(5)

The most important right of the Karnavan is the right to possess both movable and immovable property of the Tarwad and to manage all its concerns internally and also in its relations with the outside world. The right of management includes the

(1) *Malabar Law*, By Ramachandra Aiyar, Section 32, p. 8.
Malabar Law, by Moore, p. 120.

(2) *Malabar and Aliyasantana Law*, by Sundara Aiyar, p. 34.
Aliyasantana Law, by G. Krishna Row, p. 61.

(South Canara—Earlier decisions held senior male to be the *ejaman* or *Karnavan* as in Malabar-Zilla Decision, No. 46, of 1851 (Mr. Chatfield) dated 28-9-1852, at p. 57;

No. 301 of 1850 (Mr. Anderson), dated 30-10-1851; referred to in *Aliyasantana Law*, by G. Krishna Row p. 58.

Later decisions—Ejaman or manager senior among the female members, S.A. 484, of 1870; S.A. 1505 of 1886.

An intermediate theory—Males or females, whoever is senior in age. S.A. 1505 and 1506 of 1888 dated 10-9-1889. S.A. 174 of 1888, dated 27-11-1883 (unreported case, H. C.) pp. 59-60, referred to in G. Krishna Rao's *Aliyasantana Law*.

Mahalinga v. Mariyamma, 1889, 12 Mad. 462. See also Devu v. Devi i(1885), 8 Mad. 858, at p. 860.

(3) Subramanyan v. Gopala, (1886), 10 Mad., 223, at p. 225.

S.A. 2599 to 2605 of 1914, referred to in Sundara Aiyar's *Malabar Law*, p. 33.

(4) Sundara Aiyar's *Malabar Law*, pp. 33-34.

5) Sundara Aiyar s *Malabar Law*, pp, 33-34.

right to receive the Tarwad income and distribute it according to its needs, the right to alienate Tarwad property in case of necessity or by common consent, and the right to represent the Tarwad in suits. He has also the right to be the guardian of all the minor members in the family.

Firstly, the Karnavan is prima facie entitled to represent the Tarwad in suits.(1) As Justice Holloway observed: "A Malabar family speaks through its head and in courts of Justice except in antagonism to that head, can speak in no other way."(2) He is entitled to sue in his own name for recovering or protecting the property of the Tarwad.(3) Where the Karnavan has conducted litigation in a representative capacity (without fraud or collusion) the Tarwad is bound by the decree.(4)

This rule has been evolved after a great conflict of judicial decisions. It was once thought that unless all the members of the Tarwad, including the Karnavan, were impleaded or the method prescribed by the Civil Procedure Code, Section 30, was followed, the decision against the Karnavan alone will not operates as *res judicata* so far as the other members of the Tarwad were concerned.

It may be remarked in passing that the present view as to the representative character of the Karnavan in Tarwad suits is more in accordance with the theory of the law as to the Karnavan's position in the Tarwad, in whose person the Tarwad, so to speak, may be said to be merged. He is the person in possession of the Tarwad property. He is the guardian of all the minor members in the family, and is the sole manager of the Tarwad affairs. In a sense, he represents the Tarwad more fully than the Karta of a joint Hindu Family; since in Hindu Law a suit against the manager of a joint Hindu Family for a debt contracted by him for a family necessity is binding on all the members comprising the

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(1) Varanakot Narayanan Namburi V. Varanakot Narayanan Namburi (1880) 2 Mad. 328, at p. 331. See also 50 Mad., 481 (1926,) Manavadan v. Sree devi.

(2) A. S., 120 of 1862, referred to in Moor's *Malabar Law*. p. 98, unreported.

(3) Varanakot Narayanan Namburi v. Varanakot Narayanan Namburi, (1880), 2 Mad. 328.

(4) Thenju v. Chimmu, (1884). 7 Mad. 413, at p. 416 Vasudevan v. Sankaran (1896), 20 Mad. 129, F. B. Yakkanath Eacharaunni Valia Kaimal v. Mannakkat Vasunni Elaya Kaimal (1909), 33 Mad. 486, at p. 488 and 489.

Vesu v. Kannamma (1926), 51 M. L. J. 282 at p. 285—7 Karakkatittul Rayrappa v. Kayatam Charl Vettil (1918). 45 Indian Cases 480.

Kamal Kutti v. Ibrayi, (1901) 24 Mad. 658, at p. 659.
Menakat Vellamma v. Ibrahim Lebbe (1903) 27 Mad. 375, at pp. 376; 377.
Abuvakkar v. Kunhikutti Ali (1922).
74 Indian Cases 27.

For the old view see the following cases:

Kombi v. Lakshmi (1881). 5 Mad. 201 at pp. 206-7-Ittiachan v. Vellappan (1885) 8 Mad. 484 at pp. 486-488. (F.B.); Overruled by 20 Mad. 129 (F.B.)

Sri Devi vs. Kelu Eradi (1886) 10 Mad. 79 at p. 83-84.
Vasudeva vs. Narayana (1882) 6 Mad. 121 at p. 129.

family,[1] the reason for applying the same principle to the Karnavan of a joint Malabar family is much stronger.

Secondly, the Karnavan has the right to compromise suits in which the Tarwad is involved, provided he acts *bona fide* and without fraud or collusion and for the benefit of the estate.[2]

Thirdly, he has the right to alienate Tarwad property for family necessity. This is one of the frequent causes of litigation in Tarwad. It is, moreover, the right that is most liable to be misused by the Karnavans and imposes on them a "great conflict between interest and duty." The Karnavans, having their own children, are under a temptation to benefit them at the expense of the Tarwad property.

From early times the power of the Karnavan to pledge the credit of the family for necessity or beneficial purposes has been recognised.[3] The whole of the Tarwad property is liable for a Tarwad debt properly incurred by the Karnavan.[4] In the case of simple debts at the present day there is no presumption, *prima facie*, as to their binding nature on the Tarwad the burden of proof being, in the first instance, on the creditor as in general Hindu Law.[5] In Travancore, on the other hand, there is a presumption that any simple debt contracted by the Karnavan is for a purpose which is binding on the family.[6] To quote from the Travancore Law Reports: "As to the question of the burden of proof of family necessity in dealing with a managing Karnavan (*i.e.*, one *de jure* and *de facto*) the creditor no doubt starts with a presumption in his favour but the weight due to such presumption will vary with the circumstances of each case."

(1) *Hindu Law*, by Mulla p. 255.

(2) Krishnan Krishnan v. Krishnan Padmanabhan (1078. Tr. Cal) 15 Tr. L. R. 144. at p. 145.

(3) Kutti Mannadiyar v. Payavu Muthan (1881) 3 Mad. 288 at p. 289.

Raman Padmanabhan v. Govinda Velayudhan (1064 Tr. Cal.) 9 Tr. L. R. 56 at p. 57.

Hindu Law by Strange, p. 97.

(4) Parrakel Kondi Menon v. Vedakentil Kunni Penna (1868) 2 M. H. C. R. 41. at pp. 41 and 42.

(5) S. A. 87 of 1844.

S.A. 95 of 1856, referred to in *The Domestic Law of Kerala* by Subramania Sastri, p. 82.

Kutti Mannadivar v. Pagan Muthan (1881) 3 Mad. 288 at p. 289.

Kuttan v. Kalliani Amma, (1917) 40 Indian Cases, 449.

Malabar Law by Moore, pp. 169—170.

Hanooman Persaud's case (1856.) 6 Moore's I. A. 393 (P. C.)

(6) *Malabar Law* by Moore, pp. 168—169. See also The *Domestic Law of Kerala* by Subramania Sastri. at pp. 83 84.

Krishnan Aiyappan v. Padmanabhan Raman (1081 Tr. Cal.) 21 Tr. L. R. 289 at p. 255.

Kunji Kotha v. Aiyappan Krishnan (1065 Tr. Cal) 9 Tr. L. R. 100 at p. 104.

The Karnavan has the undeniable right to lease Tarwad property for a reasonable period, and to grant simple mortgages like Kanoms or Ottis,[1] (forms of tenancy in which the tenant makes a small advance to the landlord). This is founded on the principle that simple leases and mortgages are the usual means of income of a Tarwad and the right is only an incident to the Karnavan's ordinary powers.

But the Karnavan, as a rule, has no power to make permanent alienations, either by way of lease for long periods[2] or mortgages of a like nature or sales, without the consent of the junior members in the family, the theory being that, where all the members of a Tarwad are co-owners, it stands to reason that any transaction which entails loss of ownership in the property by the Anandravans should be supported by their consent. Any such alienations by the Karnavan, if sanctioned by the written consent of the senior Anandravan, will be *prima facie* upheld, provided it is for a purpose necessary or beneficial to the family. Generally the assent of the senior Anandravan is held to be sufficient because he is supposed to represent the other members of the family, and because he will be interested in conserving the property from alienation being the next person entitled to succeed to the office. It may be noticed that where the Karnavan alienates Tarwad property for necessity even without his consent, the sale or mortgage will generally be upheld, some decisions to the contrary notwithstanding. It is needless to say that where all the members consent to an alienation it would be valid even though there is no family necessity. This topic is a complicated one, and the decisions are conflicting.[3] There are two views on the subject: namely, first that no such alienation is valid without the consent, express or implied, of all or most of the adult junior members in the family; and secondly, that where there is a family necessity or

(1) Edathilitti v. Kopshan Nayar (1862) 1, M. H. C. R, 122 at p. 123.
Tod. v, P. P. Kunhamod Hajee (1881) 3, Mad 169 at pp. 175 and 176.
Kenath Puthen Veetil v. Karumathil (held the Karnavan is competent to create Kanoms without necessity) (1923) 75 Indian Cases, 476 at p. 478.
60 M. L. J. 450.

(2) Kalliani Amma v. Govinda Menon (held lenses, for 60 years invalid), (1911). 35 Mad. 648 at p. 655.
Tod v. P. P. Kunhamod Hajee, (1881) 3 Mad. 169, at pp. 176—177—178. (Held a lease for 99 years invalid)

(3) Varanakot Narayanan Namburi v. Varanakot
Narayanan Namburi (1880), 2 Mad. 328 at p. 331.
Malabar Law, by Moore, pp 148—157.—
Kombi v. Lakshmi (1881) 5 Mad. 201, at p. 207.
Raman Menon v. Raman Menon (1900), 24 Mad. 78 at pp. 80 and 81 (P. C.)
Mitavelil Katutha Krishnan v. Vengan Thiruvattan
Thirian Ayppu (1063 Tr. Cal.) 6 Tr. L. R, 49 at pp. 53. (F.B.)
See *The Domestic Law of Kerala*, pp. 78—79 by Subramania Sastri.

benefit the alienation will be valid, even though the head of the family has no authority from the junior members.

It will appear that the former view is more logical in that it consistently carries out the principle of equal ownership of the junior members. For the other view, it may be urged that good logic sometimes makes bad law, and that this a case in point and further that, if the general principles of Hindu Law may be taken as a guide on such occassons, the latter view ought to prevail.(1)

It need hardly be said that, as in the case of simple debts, more so in the case of mortgages and sales, the burden of proof is on the alienee to prove family necessity or benefit. The principle of law in the well-known Hanooman Prasad's case will in general apply.

Fourthly, the Karnavan has the right to delegate his duties to any junior member in the Tarwad. The Karnavan's duties are divided into temporal and spiritual, and there are some who hold that the Karnavan's temporal duties could be assigned even to a stranger to the family.(2) But others reject this view as artificial and impracticable (3)

Fifthly, the Karnavan has the right to renounce his office in favour of the senior Anandravan. (4)

Sixthly, the Karnavan has the right to enter into a family arrangement by which he could consent to the curtailment of his powers of management. Under this contract, usually desiganted as the Family Karar, he could even appoint a junior member as the *de facto* Karnavan, in which case he will still continue to be the Karnavan *de jure* in " respectable retirement." It is not possible to detail here all the possible clauses that might be put into such an arrangement : it is enough to mention for our purpose that it may extend from a mere delegation of some of the minor powers of the Karnavan to a complete renunciation.(5) but it is necessary to observe here that where there is a binding Family Karar to which the Karnavan is a party he, as well as the other

(1) Compare the practice among the Malays :

" The sale of communal property is prohibited. Only in extreme cases, the immovable property can be mortgaged, or, if necessary, sold."

Papers on Malay Subjects, 5, by Doctor Wilken. p. 21.

(2) Krishnan Kidavu v. Raman, 89 Mad. 918 at 920.

(3) See *The Domestic Law of Kerala*, by Subramania Sastri., pp. 35—36

(4) 28 Mad., 182. (F.B.) Kenath Puthen Vittil Tavazhi v. Narayanan (1904). 6 M.H.C.R., 145, at p. 150 (1869).

Raman v. Kanni (1077 Tr. Cal.) 19 Tr. L. R., 42. at p. 43 & 44.

(5) Bhangi Achan v. Bheeman Achan (1915), 32 Indian Cases. 501, at p. 502.

members including the minors (1) are bound by it. The Karar will be binding so long as he lives; he cannot revoke *it* arbitrarily(2) With his death the arrangement will, as a rule, also fall to the ground,(3) subject however to certain exceptions,(4) which will be mentioned subsequently.

A word may be said as to the principles underlying the Family Karar. Karar is an Urdu word for a contract or an agreement; a Family Karar is only a family-contract. Hence, generally speaking, the principles applicable to a contract will *a fortiori* apply to a Family-Karar also. Therefore the Karar will only bind the parties to it, subject, however, to custom. But the case of the minors is an exceptional one, and is founded on the principle that where they are properly represented by their guardians and the agreement is not prejudicial on the whole to their interests, the Karar will also bind them. In regard to persons not parties to it, the agreement will not be binding, especially when it concerns a limitation of their personal rights.

Seventhly, the Karnavan has the right to receive the income of the Tarwad and distribute it for Tarwad purposes. Ordinarily he is not liable to account except when he abuses his position and misappropriates the family-funds.(5) He may be said to be the Chancellor of the Tarwad Exchequer.(6) But the Karnavan has no right to invest Tarwad funds in starting a new trade or industry.(7)

Eighthly, the Karnavan is the legal guardian of both the person and property of the minor members in the Tarwad. "The father has by positive law not the smallest right to their custody."(8) No guardian could be appointed with reference to the interest of the minor in the Tarwad property under the Guardian and Ward's Act, "the reason being that the infant's interest is not individual property;"(9) but if the minor happens to possess separate property, the question of guardianship may arise. There does not seem to be any direct authority on the point; probably in a Mopla Tarwad, the rule will be in accordance with the Muslim Law.

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(1) Moidin Kutty v. Beevi Kutty Ummah (1904), 18 Mad. 38, at p. 40. 31 M.L.J. 879. at p. 881.

(2) S.A. 357 of 1881 Ramachandra Aiyar p. 8, Sec. 30.
S.A. 8 of 1880 and 357 of 1881.
Malabar Law, by Moore p. 119.

(3) Chendan Nambiar v. Kunhi Raman Nambiar (1917), 41 Mad., 577, at p.581. (F.B.)
Ramachandra Aiyar, *Malabar Law*, p. 8. Sec. 29.

(4) Achutan Unni V. Vasunni 20 M.L.J., 344 at p.346.

(5) 50 Mad., 431 (1926). Manavadan v. Sreedevi.

(6) Narayanan v. Govinda, 7 Mad., 352, at p. 353 354.
Maradevi v. Pammakka (1911), 36 Mad. 203, at p. 206
Konthi Menon v. Chenni Veetil Unneri Nambiar (1911) 12 Indian Cases, 77 at p, 78.

(7) Abdul Rahman Kutti Haji v. Hussain Kunhi Haji (1919), 42, Mad. 761.
P. P. Kunhamood Hajee v. P. P. Kuttiah Hajee (1881), 3 Mad., 169, at p. 176.

(8) 7 M. H. C, R., 179.

(9) 32 Mad., 139.

Lastly, in the words of their Lordships Turner and Muthuswami Aiyar, "the respect for elders, which is a marked feature of all Hinduism, is nowhere stronger than in Malabar, and, consequently, although the individual interest of the manager of a Tarwad in Tarwad property is considerably less than that of a manager of a Hindu family, he has, in the management of the Tarwad property, somewhat larger powers than are accorded to the Hindu manager."(1)

SECTION III

The Anandhavans.

In theory, the junior members have all equal right and are co-owners. Equal rights, however, does not mean that every member has a right to claim an aliquot portion of the Tarwad income for himself.(2) In the words of Mr. Holloway (in a suit by an Anandravan for a share of the income to be assessed by dividing the whole income into equal parts), "the plaint contains the usual fallacy that all the members of the family have equal rights therein. They have equal rights in one particular; each has the right of succeeding to the management as he becomes senior in age. The whole doctrine of a Malabar family is that they are all to reside in the family house, and be there supported by the head of the family."(3)

In the first place, each member of the Tarwad has a right to be maintained in the Tarwad house,(4) and "suffers a personal wrong if that right is not accorded to him."(5) The Junior members will not, however, be justified in complaining that more is being paid to one member. Further, the Anandravans residing in the Tarwad house are not entitled to obtain a decree for payment of money monthly for maintenance from the head of the family.(6) Again, every Anandravan has a right to maintenance and the fact that he is a misbehaving member of the family or is in possession of funds of his own will not disentitle him.(7)

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(1) P. P. Kunhamood Hajee v. P. P. Kuttiah Hajee (1881) 3 Mad., 169, at pp. 174, 175.

(2) A. S. 275 of 1858 per Holloway, J.

A. S. 238 and 278 of 1858. Tellicherry, referred to in The "Domestic Law of Kerala" by Subramania Sastri, p. 145.

S. A. 1417 of 1923, 3rd August, 1925.

See notes of recent cases: 49 M. L. J. 241.

(Aliyasantana Law.)

(3) Kunigaratu v. Arrangaden (1864), 2 M. H. C. R. 12.

(4) A. S. 275 of 1858.

A. S. 158 of 1860.

All referred to in *Malabar Law*, by Moore, pp. 124 125 and 126.

(5) Kunhammatha v. Kunhi Kutti Ali (1883), 7 Mad. 233, at p. 235.

(6) Kunhammatha v. Kunhi Kutti Ali (1883), 7 Mad. 233, at p. 235.

(7) P. Teyan Nair v. P. Raghavan Nair (1821), 4 Mad. 171 at p. 172.

The principles underlying this branch of the law are that the junior members, being in theory co-owners, each one of them is entitled to be maintained out of the Tarwad income, however meagre the quantum of the allowance might be.(1) Hence it is not in the discretion of the Karnavan to refuse maintenance arbitrarily to any member.

Maintenance includes boarding, lodging, clothing, medical expenses,(2) education,(3) and even a claim for support of an unfounded criminal prosecution.(4) In the case of rich Tarwads it will also include pocket-expenses known as *'melchilavu'*.(5) The marriage expenses of the junior members of the family are also included under the term.(6)

According to the principles of Marumakkathayam Law, the junior male members are not entitled to claim maintenance for their wives and children living with them in the Tarwad house, for, as has been noticed before, in a Marumakkathayam family the female members, being the stock of descent, they and their descendants (exclusively in the female line) are alone entitled to live in the Tarwad and be maintained by the Karnavan. The male members have indeed in theory equal rights with the female members, of which right to maintenance in the family house is one. But there is this difference between their rights, that whereas every female member has an interest in the Tarwad property along with her children and other descendants in the female line, the same thing cannot be said of the male members in the Tarwad who take only a life interest and whose children do not acquire an interest by birth in the Tarwad. Hence, while the issue of the female members in a Tarwad tracing descent exclusively in the female line have a right to maintenance from the Tarwad by birth, the children of the male members have not. No suit for maintenance will lie against the Karnavan of the Tarwad to which the husband or father belongs, at their instance, for the simple reason that they do not belong to his family.

It is, however, usual in North Malabar while granting maintenance to the junior members to take into account their wives and children, a practice confirmed by judicial decisions. A claim for increased maintenance will lie against the Karnavan in such a case, provided he has sufficient funds for the purpose.(7)

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(1) Padmanabhan Krishnan v. Chakki 12 Tr. L. R. 51 at p. 53
(2) Kelu Achan v. Umla Achan (1912), 17 Indian Cases, p. 704.
(3) Neelakanta Thuruvambu v. Ananthanarayana Aiyar (1907), 19 M.L.J. 590, at p. 591.
(4) Gopala Aiyar v. Nagali Kunju, 5 Tr.L.R., 128, at pp. 129 and 130.
Subbu Chetty v. Krishnacharaya (1910) 21 M.L.J. 159.
(5) Sheshappa Shetty v. Devaraja Shetty (1926) 50 M.L.J. 434.
(6) Padmanabhan v. Perumal Madhavi, 11 Tr.L.R. 44 at p. 45.
(7) Parvathi v. Kumaran Nair (1882), 6 Mad., 341 at p. 344.
Sheshappa Shetty v. Devaraja Shetty (1925), 50 M.L.J., 434, at pp. 441-442 (Aliyasantana Law.)
Ravanni Achan v. Thankunni (1919), 42 Mad., 789.

It has been noticed elsewhere that the usual practice among the Moplas of North Malabar is for the husband to visit his wife in her Tarwad house, unless he is rich enough to build a separate house for her. The husband, being a stranger to the family of his wife, is not entitled to be maintained by his wife's Tarwad; he has to look to his Karnavan, for maintenance.(1) Hence a Mopla husband living with his wife in her house is entitled from his Tarwad to separate maintenance and also for an increased amount. It is contended by some that the present practice as to separate maintenance is an infringement of the true principles of Marumakkathayam Law. No doubt there is much force in this argument, for it is indeed an undeniable principle of Marumakkathayam Law that no member could claim maintenance, living away from the Tarwad house without the Karnavan's consent. But it may be urged in favour of the modern practice that customs and customary law are not inflexible; they change with the times. To look back to ancient usages and customs for every incident of modern life is to shut one's eyes to the principle that customs like everything else, have their growth and decline. For instance, of the two usages, to uphold the ancient custom of denying to a Mopla junior member the right to claim separate maintenance while living with his wife in her Tarwad house will be manifestly unjust, considering the hardship which such a rule would entail where the wife lives in her house with her children, and the husband, who visits her there, can look neither to his Tarwad nor to hers for his maintenance. He has no claim on his wife's Tarwad because he is not a member of her family and he has no claim on his Tarwad because he does not live there.

Maintenance.

The general principle in Marumakkathayam Law is for the junior members to live and be maintained by their Karnavan in the Tarwad house (2) In Travancore this rule is strictly observed. Ordinarily there is no right to separate maintenance, the reason being that if it were recognised the Tarwad could not exist;

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(1) Govindan Nair v. Kunju Nair (1919), 42 Mad. 686, at pp. 687—689.

(2) Subba Hedge v. Tongu (1869), 4 M.H.C.R., 196, at pp. 201—208 (Aliyasantana Law).

A.S. 275 of 1858 (Tellicherry)
A.S. 158 of 1860 (Tellicherry),
A.S. 288 and 278 of 1860 (Tellicherry). All referred to in Moore's *Malabar Law*, pp. 124, 125.
Kunigarathu v. Arrangaden (1864), 2 M.H.C.R. p. 12.
Kunchi Amma v. Ammu Amma (1912), 36 Mad., 591.
Kumaran v. Thengachy, 1 Tr.L.R. 55 at p. 56.
Kochu v. Kunji Pillai, 4 Tr.L.R. 25.
Padmanabhan Krishnan v Chakki, 12 Tr.L.R. 51 at p. 52 and 53.
S.A. 28 of 1882 (H.C.) refferred to in Moore's *Malabar Law*, p. 132.
Kesava v. Unikanda and another (1887), 11 Mad. 307.
Chekkutti v. Pakki (1888), 12 Mad., 305

besides, on principles of economy, it is more expensive to maintain members individually. Whatever might have been the custom in ancient days, it is the practice now in Malabar to allow separate maintenance to the Anandravans where it is necessary or the circumstances so require it. The question in such cases will be whether the separate living is for a proper purpose; if so and if the Tarwad could afford it, the claim would generally be well founded.(1)

Sometimes family-agreements are entered into by the Karnavan with the junior members of the family, for the sake of convenience, by which the family property is divided among the group of Tavazhis constituting the Tarwad as an allotment for maintenance. The Branch Karnavan usually manages the property allotted to his Branch and becomes the *de facto* Karnavan with reference to it. It is not in the power of the Branch Karnavan to alienate or encumber the property allotted for maintenance.(2) The Karnavan who entered into the Karar as well also the succeeding Karnavan cannot ordinarily revoke such family Karars arbitrarily, provided they are made *bona fide* and are prudent arrangements at the time they are made.(3) The Karnavan, however, can revoke the arrangement so far as may be necessary in order to make re-allotment for maintenance,(4) and he can even revoke the Karar and resume control of the property allotted for the purpose, if the exigencies of the family so require,(5) subject to his making other suitable arrangements for the maintenance of the branch, the principle being that if this power of revocation were not recognised it would be impossible for the Karnavan to carry on the management and incur the liability to maintain all the members of the Tarwad. Where the allotment to a junior member for maintenance is at the instance of the Karnavan, he can resume full control at any time; the transaction in that case will only be in the nature of a delegation.(6)

A word may now be said regarding the position of a Tavazhi possessing Tarwad property in lieu of maintenance—whether the debts, which are binding on the Tarwad subsequent to the allotment, are binding on the Tavazhi ? The Madras High Court (7)

(1) Govindan Nair v. Kunju Nair (1919), 42 Mad. 668 at pp. 687, 689.
Marudevi v. Pammakka (1911), 36 Mad. 203 at 212 (Aliyasantana Law).
(2) Neelakandan v. Raman, 15 Tr.L.R., 42 at p. 43.
(3) Ekkanath Valia Kaimal v. Manakkat Elaya Kaimal, 38 Mad., 486
S.A. 368 of 1883, referred to in *The Domestic Law of Kerala, by Subramania Sastri*, p. 158.
(4) *The Domestice Law of Karala*. pp 156—157
(5) A.S. 450 of 1888, referred to in *The Domestic Law of Kerala*. p. 158.
(6) S.A. 857 of 1881, referred to in *The Domestic Law of Kerala*, pp. 157—158.
(7) Parakal Koodi Menon v. Kunni Penna, 2 M.H.C.R., 41 (1864).
Thankammal v. Kunhamma (1918), 37 M.L.J., 369 at p. 372.

answers this in the affirmative and the Travancore High Court (1) in the negative: according to the former, the Tavazhi property is liable for such debts as well as for debts contracted before allotment. The British Courts base their opinions on the doctrine that even though there is allotment to the Tavazhi for maintenance the property is still Tarwad property, and any arrangement entered into by the members of the Tarwad for their own convenience cannot affect the rights of a *bona fide* creditor not having notice of the family Karar. The other view is based on the principle that, if that doctrine were recognised, it would in effect nullify the family-Karar.

Secondly, the Anandravans have the right to set aside alienations improperly made by the Karnavan. It is not necessary that all the members should join, even a single junior member can dispute their validity and binding character.(2) If the transaction is a mortgage or sale he could recover possession of the property without first suing to have it set aside. In case the junior member recovers possession, the Karnavan has the right to have the property handed over to him; otherwise the unity of possession of the Tarwad property would be disturbed.

The Anandravan has the right to prevent an improper alienation by the Karnavan only by virtue of his right to conserve Tarwad property. This does not, however, mean that any Anandravan can pledge the credit of the family or sell family property. In this respect, though in theory the Karnavan has no greater rights over the Tarwad property than the Anandravans, the junior members cannot supplant him as regards mere rights of management. They cannot, for instance, grant mortgages like Kanoms or Ottis or lease out family property as ordinarily the Karnavan can even without family necessity.(3) In all these cases the principle is the Karnavan being the only person entitled to management the junior members cannot usurp his rights in any manner whatsoever. The position, however, is different where the Anandravans exercise the right of the Karnavan in exceptional cases, *bona fide*, and where such action is necessary for the preservation of the Tarwad property.

Thirdly, the Anandravans have the right to bar an adoption. It has been held that where the Tarwad is composed of only two members, the senior among them cannot adopt without the sanction of

(1) 12 Tr.L.R., 183, at pp. 185, 186.
Narayanan v. Kanakku, 14 Tr.L.R. 49. p. 54. (F.B.)
(2) Chummaru Mani v. Kumaran Neelakantan, 12 Tr. L. R. 211 at pp. 214—219 (F.B.)
(3) Krishnan v. Thommen, 1 Tr. L. R., 68.
Kothavarman v. Avukkan, 3 Tr L R, pp. 87
Kunnath Packi v Kunnath Muhammad (1925) 49 M. I. J, 513, at pp 515—516.
Narayanan Kumaran v Velayudhan, 16 Tr.L.R, 59
Raja of Arakal v Cheria Kunhi Kannan (1914), 29 M.L.J, 632, at p, 634 and 638

the other.(1) This rule is only an extension of the doctrine that all the members in the Tarwad are co-owners and have equal rights over the Tarwad property. Hence a person could not be introduced into the family by the Karnavan without the consent of the other members.

PARTITION.

Fourthly, the Anandravans have the right to claim an equal share when the Tarwad property is divided by the unanimous consent of all the adult members in the family.(2) There are two views on the law of partition in Malabar, namely, that the division of Tarwad property should be *per capita*;(3) (*i. e.*, by dividing the Tarwad property into as many portions as there are members) and the other that it should be *per stirpes*(4) (*i. e.*, by branches). In Madras the former rule is generally followed. From the authorities on the subject it will appear that the *per stirpes* rule is the older one and in accordance with the true principles of Marumakkathayam Law.(5)

The advocates of the *per stripes* rule urge that while in a joint Hindu Family the rule of partition is *per stirpes* why should a different principle be followed in a joint Malabar Family. For the other view it is said that the doctrine of Marumakkathayam Law is equality. All the members are co-owners and have equal rights ; they have equal rights to maintenance, equal rights to conserve the property, equal rights to bar an adoption, equal rights

(1) Raman Menon v. Raman Menon (1900). 24 Mad. 78 P. C.

(2) Arayalprath Kunhi Pocker v Kanthilath Ahmad Kutti Haji 29 Mad, 62, at p. 68, (1905).

Munda Chetti v. Timmaju Hensu (1868), I.M.H.C.R. 380, at p 383 (Aliyasantan-Law)

Narayanan v Parvathi Nangali, 5 Tr L. R. 116 at p 118

Sulaiman v Biyathumma (1916). 32 M. L. J. 137, at pp 139, 141 P C

Maradevi v Pammakka (1911). 36 Mad 203, at p 205 It will be observed that the early decisions in Malabar were for granting partition at the instance of an individual member and the rule as to impartibility, except by common consent, is of later growth which has been stereotyped by judicial decisions. See Moore's Malabar Law, pp. 12, 15, 16 See Munda Chetti v. Timmaju Hensu 1. M. H. C, R 308 at p. 381 (Aliyasantana Law)

See also Dr Pandalai, *Marumakkathayam Law*, pp, 104—107.

See Sundara Aiyar, *Malabar and Aliyasantana Law* pp, 8, 9, 10.

(4) Strange *Hindoo Law* para 377 page 69 (1856) See also Moore *Malabar Law and Custom*, p. 12 Narayanan Kuttiammal v. Achuthan Kutti Nair (1918) 42 Mad. 292 at p. 295. See also Sulaiman v. Biyathumma (1916) 32 M. L. J. 137 at p. 141 (P C). See also Sundara Atyar, *Malabar and Aliyasantana Law* p. 10.

See Subramania Sastri, *The Domestic Law of Kerala* pp. 220-222, 224.

See Dr. Pandalai, *Marumakkathayam Law*, p. 178.

(5) This dispute has been settled by the passing of the Madras Marumakkathayam Act XXII of 1939. But it applies only to the Hindus.

to succeed to the office of the Karnavan in their turn. Therefore they should take an equal share on partition of the Tarwad property. There is also another theory representing a compromise between the two, namely, a division either *per stirpes* or *per capita* made *bonafide* will be valid.(1)

It may be remarked that a partition in which the junior members are represented by their respective guardians will be binding on them provided it is made with due regard to their interests.(2)

It remains only to consider the effect of partition on the Tarwad. As soon as a valid partition is effected between the members there is a severance of interest in the property, and then the relation of the members *inter se* is usually described as consisting of only *Pula Sambandham* (i.e., community-pollution), and no *Mudal Sambandham* (i.e. community of property). The result is that only those who have "*Mudal Sambandham*" can succeed to each other, and those who have separated and have only "*Pula Sambandham*" between them (who are usually designated as *Attaladakam* heirs) cannot succeed to each other's property so long as even one member of the group is alive. Again on a division of the Tarwad, the Karnavan would no longer represent any branch except that to which he himself belongs : the proper person then to represent each branch would be the senior male member of that branch, *viz.*, the Branch Karnavan.(3)

In the case of partition all members living in the Tarwad house are entitled to claim a share. But where for some reason or other some of the members do not live in the Tarwad house, the onus lies on them to prove that they are within three degrees from the same female ancestress in the female line in order to entitle them to a share on partition. In Travancore the rule is four degrees.(4) In the words of Dr. Pandalai: "There is authority for stating that, even without an express partition, mere distance of relationship of more than three degrees when combined

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(1) Sundara Aiyar *Malabar and Aliyasantana Law* p. 11.

(2) S. A. No. 1329 of 1886, referred to in Subramania Sastri *The Domestic Law of Kerala* p. 218.

See also Veluthakkal Cherunder v. Veluthakkal Tarwad Karnavan 31 M. L. 879.

Aryalprath Kunhi Pocker v. Kanthilath Ahmad Kuti Haji; 29 Mad. 62 at p. 63 (1905).

Sarveshri Shettathi v. Puttamma Shettathi, 29 Indian Cases 474, (1915).

Prakkaten v. Koram (1912) 14 Indian Cases 295 at p. 296.

Veluthakkal Chirudevi v. Veluthakkal Tarwad Karnavan (1918) 31 M L J 879 at pp. 880-881.

Narayani Kuttiammal v. Achuthan Kutti Nair (1918) 42 Mad, 292 at p, 294,

A. S. 337 of 1918 referred to in Sundara Aiyar Malaar and Aliasanthana Law p. 15.

(3) Sankara v. Kelu (1889) 14 Mad. 29 at p. 30—Kunhappa Nambiar v, Shridevi Kettilamma (1895) 18 Mad. 451 at pp, 452 453.

(4) Dr. Pandalai *Marumakkathayam Law* pp. 131, 132, 133.

with separation of residence will amount to determination of the undivided state of a Tarwad[1].....This was said to be the rule according to which the undivided property of a man descends to his heirs, but, in the case of persons living together, even the remotest members are acknowledged as part of the family if living under subordination to the tarwad Karnavan and taking part in their religious observances."[2]

In this connection a comparison of the practice among the Malays will not be out of place. In the words of Dr. Wilken; "The *harta pencharian* is, of course, individual property. But it is different with the *harta pusaka* which, as a rule, is the communal property of a family. For custom ordains that the inheritance may not be divided, but must continue to belong to the heirs conjointly. Division of property is permitted only "*kalimo kali turun*", i.e., "to the heirs in the fourth degree"....."When this is resorted to, the number of portions is fixed simply to correspond with the number of *turunan*, lines of descent (Stirpes) the youngest *turunan* has the first choice and so on, until finally the eldest *turunan* receives the last remaining portion."[3]

Fourthly, each Anandravan has the right to succeed to the office of the Karnavan in his turn if he lives long enough; it goes without saying that this is one of the most important rights of the Anandravans. Here let us consider the grounds for the removal of the Karnavan from his office. It may be at once remarked that the analogy of the Hindu Law is of no general application here so far as it is based on spiritual doctrines. In a case from South Canara, their Lordships Muthuswami Aiyar and Shepherd observed "The Hindu Law cannot be extended to the Aliyasanthana usage by analogy, so far as it rests on special conventional grounds and so far as it relates to disqualified heirs."[4] The same rule will *a fortiori* apply to Marumakkatayam Law. Therefore congenital blindness, deafness or dumbness, incurable disease like leprosy etc., will not by itself disentitle a person from succeeding to the office nor would it afford a ground for his removal. This rule is, however, subject to the proviso that the Karnavan must be able to carry on the management in spite of the deformity.[5] Insanity,[6] for example, will certainly disentitle a person from succeeding to the office as also acts of grave moral turpitude.[7]

(1) Ahmed Haji v Koyakutti (H. C) S. A. 344 of 1871 unreported—referred to in Dr. Pandalai's Marumakkayaam Law pp 131, 132, 133.

(2) Kunjiraman v Raman Nambiyar S.A. 290 of 1874 unreported (H C)—referred to in Dr. Pandalai's Marumakkatayam Law pp. 131, 132, 133.

(3) Papers on Malay Subjects; Dr Wilken p. 21.

(4) Chandu V. Subba (1889), 13 Mad., 209, at pp. 210.

(5) Govindan Nayar v. Narayanan Nayar (1912), 23 M. L. J., 706, at p. 714.

(6) Govindan Nayar v. Narayanan Nayar (1912), 23 M. L. J., 706, at pp. 711-714.

(7) Ukkandan Nair v. Unikumaran Nair (1895), 6 M. L. J., 139, at p. 140.

As has been previously remarked, there are only two ways of removing the Karnavan from his office. One is by a family Karar to which he is a party: the other is by a suit. Sometimes the question arises, does a supervening disqualification such as lunacy by itself operate to deprive the Karnavan of his office or whether a suit to remove him is necessary? There are two views on this subject. One is that the Senior Anandravan succeeds to the office *ipso facto* on the lunacy of the Karnavan.(1) The other view is that his removal could be effected only by suit,(2) while some, like Mr. Justice Sundara Aiyar, have left the question open. A suit will lie to remove the Karnavan, but not for curtailing his powers,(3) and the doctrine of *Lis Pendens* will not apply pending a suit for his removal, the principle being that, if otherwise, such litigation would plunge the Tarwad into confusion, and the rule of law is well established that until the very moment of his removal by a decree the Karnavan continues in his office.(4) Generally, the courts are averse to remove the Karnavan from his office on flimsy grounds, and unless a strong case is made out of his incompetency or mismanagement or breach of trust he would not be removed.(5) In the words of their Lordships Morgan and Holloway: "He should certainly not be removed from his situation except on the most cogent grounds.....Expediency speaks the same language as the law. Benefit seldom accrues to a family or an institution from removing one man and putting in another. It is generally the substitution of the empty leech for the full one."(6) In suits for the removal of the Karnavan, the Courts, generally speaking, appoint the next person who is senior in age. Now the question is have the Courts the power of removing the Karnavan *de jure*? There are two views on the point. Some hold that it is not in the power of the Court to exercise this equitable jurisdiction, for succession to Karnavanship is by right of birth: so also it is said that the Courts have no power to declare the next senior Anandravan unfit

(1) Govindan Nayar v. Narayanan Nayar (1913). 23 M. L. J., 706, at pp. 711-714.

(2) Subramania Sastri, *The Domestic Law of Kerala*, pp. 8 and 9.

(3) Karthiayini Pilla and others v. Kesavan 18 Tr. L. R. 248. at pp. 246-248. Cheria Pangi Achan v. Unnalachan (1914). 32. M. L. J. 323, at pp. 331, 332. S. A. 766 of 1882 and S. A. 664 of 1882, referred to in Cheria Pangi Achan v. Unnalachan, 32 M. L. J., 328, at p. 331

(4) Velayudhan v. Velayudhan (*1895*), *12* Tr. L. R. 87

(5) Ukkandan Nair v. Unikumaran Nair (*1896*). 6 M. L. J., *139* at p. 140. Tod v. P. P. Kunhamod Hajee (*1881*), 3 Mad., *169*, at pp. 177-178. Thimakke v. Akku (1910), 34 Mad. 481, at p. 485.

Nemanna Kudre v. Lakshmi Hengasu, 37 M L J., 539, at pp. 541, 542, 543, 544, (1919). (Aliyasantha na Law).

A. S. 61 of 1880. Holloway Judge, (Tellicherry) referred to in Subramania Sastri. *The Domestic Law of Kerala*, p. 47.

Cheria Pangi Achan V. Unnalachan (1914). 32 M. L. J., 328, at p. 330, A. S. 172, and 173 of 1858.

Referred to in Subramania Sastri, *The Domestic Law of Kerala*, p. 48.

(6) Eravanni Revivraman v. Illapu Reviviarman (1876).1 Mad., 153 at p. 157

to succeed to the office.(1) There are others who urge that the Courts are competent to do so.(2)

SECTION IV

Succession and Inheritance.

In Marumakkhatayam Law succession and inheritance is not of much improtance. As already seen, the theory of the law is group-ownership and group-succession, and the rule by which devolution of property takes place is by the principle of survivorship. Ancient law seldom took account of individual claims. As in ancient Roman Law and Hindu law so in Marumakkathayam Law, there could be no property belonging solely to a member in a family. Hence the earnings of individual members *ipso facto* belonged to the Tarward with the Karnavan at its head. Therefore, no question could arise as to the rule of succession on the death of the Karnavan. This branch of the law is of modern origin, and it is needless to add that succession and inheritance is only concerned with the devolution of individual property belonging to a member of the Tarwad dying intestate.

The question then naturally arises: What is individual property? It may be laid down as a general proposition that all property in possession of the Karnavan is presumed to be joint property.(3) In the case of property in the hands of a junior member there is a conflict of opinion. The older view is that it is for the individual member who sets up separate title to make it out, and the presumption is for joint ownership.(4) Another view is that there is no presumption of law either way and the problem is dismissed as a pure question of fact.(5) A third view is that it is held to belong to him exclusively until the contrary is proved. This is the view held in Travancore.(6) Again, the 'doctrine of nucleus' of the Hindu Law, which holds that all acquisitions including "gains of science" out of joint family funds are presumed to

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(1) Cheria Pangi Achan v. Unnalachan (1914) 32 M. L. J., 328, at pp. 332, 338.

(2) Neeman Kudre V. Lelnu Hengasu (1918), 37 M. L. J., 539, at pp. 541 542, 543, and 544 (Aliyasantana Law).

(3) 7 Ind. Cases 145, pp. 147, 148—Thimakke v. Parameshri (1910).

(4) S.A. 970 and 1150 of 1883. Referred to in Sundara Aiyar's *Malabar and Aliyasantana Law*, pp. 179 to 188.

33 Mad. 250 (1909) pp. 251—252—Mari Veetil Chathu Nair v. Mari Veetil Mulamparol Sekaran Nair.

(5) 36 Mad., 304, pp. 306—308 (1911)—Govindan Panikker v. Nani.

S.A. 185 of 1924—Notes of recent cases, referred to in 51 M.L.J., 457, October 1926.

S.A. 483 of 1923—Notes of recent cases reported in 51 M.L.J., 1, July 1926.

(6) 22 Tr.L.R. 121 (F.B.) p 126, para 11—Kanaku Parameswaran Vesavan v. Govinda Kumaran.

22 Tr.L.R., 178 (F.B.), p. 181, para 5—Raman Govindan v. Parvathu Pillai, Devi Pillai and others.

26 Tr. L.R., 190 (F.B.) pp. 192—193, para 4—Narayanan Raman v. Govindan Kesavan.

be joint property, applies also to Marumakkathayam Law.[1] To quote Sundaram Aiyar, "As under the Hindu Law, so under the Marumakkathayam and Aliyasanana systems joint holding is the rule and individual holding the exception and it is for the individual member who sets up separate title to make it out. The strength of the presumption would no doubt vary according to circumstances. A Karnavan who is in possession of family funds, for instance, would be presumed to have made all his acquisitions with them for the benefit of the family and in his case the presumption would be very strong. The discussion as to a nucleus and the burden of proving its existence or the contrary is common to the ordinary Hindu Law and these systems."

In Malabar Law as in Hindu Law the following are regarded as individual or self-acquired property :

(1) Gifts by father to his children individually.

(2) Property allotted on partition to an individual member.

(3) Tarwad property in the hands of the last surviving member.

Among the Nairs, and the Moplas of North Malabar before the enactment of the Mopla Succession Act, the general rule as to succession can be summed up as follows:

In the case of a male (on his death intestate) the Tarwad inherits his property,[2] and in the case of a female, the Tavazhi.[3] In Travancore and South Canara the rule is the Tavazhi is the heir[4] whether the propositus is a male or a female.

Among the Moplas of North Malabar, however, the rule is different. The Mopla Succession Act[5] has enacted that all Moplas governed by the Marumakkatayam or the Aliyasantana Laws of inheritance should follow Muslim Law with respect to devolution of their individual property.

SECTION V.

WILLS.

It has been previously remarked that under the true principles of Marumakkatayam Law there could be no individual property, hence there could be no question of alienation of separate property

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(1) *Malabar and Aliyasantana Law* by Sundara Aiyar, pp 179—188.

(2) 2 M H C R 162, p. 163 (1864)—Kallato Kunju Menon v. Palat Erracha Menon.

4 Mad. 150, p. 151 (1881)—Ryrappan Nambiar v. Kelu Kurup.

32 Mad. 351. F B pp. 361-370 (1908)—Govindan Nair v. Sankaran Nair.

(3) 38 Mad. 48 F B pp. 51, 57, 67, (1912).

(4) 22 Tr. L R 278 F. B. pp. 286, 299—Panapilla Janakipilla Narayan Pillai v. Krishnan Narayanan.

24 Tr. L R 102 F B pp. 116-121—Sakthi Kerulan v. Shakthi Shakthi (Male). 7 Mad. 575 Ahiyasantava Law, p. 577 (1884)—Antamma v. Kaveri, 39 Mad. 12 pp. 15, 16. 7 (191 5) Nanjappa Ajri v. Marudevi Hengsu.

(5) Act 1 of 1918.

by sale gift or will. Originally the opinion of the judges was divided as to the testamentary capacity of an individual member in a Tarwad.(1) According to one view an individual member had the power to make a will with reference to his self-acquired property.(2) While others held that he was not competent to alienate his individual property, the theory underlying the latter view being, that the moment a member dies his property devolves on the Tarwad by survivorship. As the vesting of the property on the Tarwad under the rule of survivorship has precedence over the vesting of the property under a will, there could be no property of a deceased member to which the devisee could lay claim. For the other view it is contended that on the death of a member in the family all his assets are governed by the rule of succession, and that the heirs of the deceased are liable to pay his debts out of his assets. They urge that the property of the deceased should be presumed to continue even after his death, and that consequently the will ought take effect. Under the Malabar Wills Act,(3) however, it is competent for any person following the Marumakkatayam or Aliyasantana Law of Inheritance to alienate all his individual property by will in accordance with the provisions of the Act.(4)

SECTION VI

The Effect of Conversion on the Tarward.

Conversion from Hinduism to Islam or Christianity has far-reaching effects on society, and hence the law which deals with the rights and obligations of the convert is of some importance in the Hindu Law. In Marumakkatayam Law, as in Hindu Law, conversion or excommunication from caste produces the same effect. It entails loss of rights in the family property not to mention the social ostracism which goes with it. In short, the convert suffers a civil death.

In order to temper the rigour of the Hindu Law, the legislature enacted The Caste Disabilities Removal Act, (5) which runs as follows : "So much of any law or usage now in force—(in British India).....as inflicts on any person forfeiture of rights or

(1) *Hindu Law*, by Strange p. 226 (1864).

(2) *Malabar Law and Custom* by Moore, p. 182.

Proceedings of the Sudder Court, 25th September 1843, referred to in Ramachandra Iyer, p. 122, Section 348.

12 Mad. 126, p. 134—Alami v. Komu (1888)

22 Mad. 9, p. 10 (1897)—Achutan Nayar v. CheriottiNayar.

The Malabar Wills Act, No. V of 1898.

(3) See the Statement of objects and reasons of Act VII of 1928.

(4) As regards the Moplas, according to the Mopla Wills Act VII of 1928, testamentary dispositions by Moplas are not governed by the Malabar Wills Act, 1898 but by the Muslim Law relating to Wills.

(5) Act No. XXI of 1850—The Caste Disabilities Removal Act.

property.....by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste, shall cease to be enforced as law."

The effect of this regulation is to preserve to the convert his rights in the joint property.[1] In Travancore, however, the old rule is preserved, since the Freedom of Religion Act has no application to an Indian State. Even there the principle applies only to Nair and Nambudri families and not to other castes like the Shanars[2] of South-Travancore, "whose social customs do not impose on the convert loss of caste or of social intercourse with the unconverted members of the family."

The position of the convert in a Hindu Tarwad in Malabar at the present day is not easy to define, yet one thing is certain; he could not continue to live in the Tarwad house, nor could he succeed to the office of the Karnavan [3] which entails both temporal and spiritual duties.[4] But the convert will not lose his right of maintenance in the family for the Freedom of Religion Act protects all his rights ; hence, if the family will not let him live with them, he has a right to separate maintenance.[5] Further, the convert will not be entitled to sue for partition on account of his conversion, for the Act does not give him higher rights than those possessed before conversion. Again, if the convert is a female and has children born to her subsequent to her conversion, such children would not be members of the joint family to which she belongs, and hence they would have no rights in their mother's Tarwad as the Freedom of Religion Act does not confer any rights on them. [6] Lastly, in case the Tarwad as a whole becomes converted, the principle laid down in the leading case of *Abraham* v. *Abraham* will apply. Either all the members of the Tarwad may put an end to the joint family if they choose to, and thus convert the joint tenancy into a tenancy in common; or they may continue the joint tenancy in spite of their change of religion. To quote from *Abraham* v. *Abraham*[7] : "Upon the conversion of a Hindoo to Christianity the Hindu Law ceases to have any continuing obligatory force upon the convert. He may renounce the old law by which he was bound, as he has renounced his old religion, or, if he thinks fit, he may abide by the old law not-

1) Dr. Pandalai, *Marumakkatayam* Law, P. 127.

(2) *Malabar and Aliyasantana Law* by Sundaram Aiyar p, 25.

(3) See 2 Cochin Law journal 703 F B.

(4) *Malabar and Aliyasnatana Law* by Sundara Aiyar, p. 25.

(5) 44 Mad. 891 F B pp. 896 and 901 (1921) Pathumma v. Raman Nambiar.

(6) 40 Mad. 1118, at 1119 to 1121 (1917).—Vaithilinga v. Ayyathorai.

(7) 9 M. I. A. 195, pp, 237-238 (1863) Abraham v. Abraham.

withstanding that he has renounced the old religion."(1) In this connection, our remarks on the origin of the law of the Moplas have a special value. We have observed elsewhere that the ancestors of the Moplas were Hindu converts to Islam who did conform and whose descendants continued to conform in many respects to the old law of the original converts notwithstanding that it differs widely from Muslim Law. The significance of this hypothesis is of immense value in arriving at a true knowledge of the law of the Moplas.

(1) The above remarks do not apply at the present day to a convert to Christianity, as the Indian Succession Act has altered the law on the subject.

CHAPTER IV

Mopla Law And Usage

In the light of the origin and history of the Moplas and their customary law, an attempt will be made in the subsequent pages to sketch out in as brief a manner as possible the various incidents of the law and usage of the Moplas with special reference to their sociology. The Marumakkatayam Moplas of Malabar, it may be observed, while following the rule of Nepotism generally, have developed certain usages and institutions, which are unique, due to the fact that they have a history and a religion all their own.

The subject may be considered in the following order:

(*a*) Marriage, dower and divorce.

(*b*) Kaipanam or Kasipanam.

(*c*) Stridhanam.

In the matter of dower or mahar it may be stated that the rule applicable is the Muslim Law. As regards divorce it may be said that though in Muslim Law the husband is dominant in matrimonial matters, among the Moplas of North Malabar it is looked upon with disfavour and is practically confined to cases of adultery. Under the Shafi Law a husband's inability to maintain his wife is a ground of divorce. But under the Marumakkatayam Law this question cannot arise for a wife and her children habitually live in their Tarwad house and her husband visits her there and there is no legal obligation on the part of the husband under the Muslim Law to maintain his wife and children while they are residing away from him. In the Laccadive Islands,[1] however, divorce is quite common and in a large majority of cases it is the woman who wants it. If the wife insists upon a separation, the husband is bound to divorce her and in that case she has to return all the clothing and jewellery which he has given her and also a portion of the 'Bir.' Similarly if the husband wants the divorce he has to forego the dower and everything else he may have given her. Either party has equal powers of divorce which they could freely use for any reason whatever. We may add that nowhere are there so many facilities for mutual divorce in British India as among the Moplas of the Laccadive Islands.

(1) See a short account of the Laccadive Islands and Minicoy by R.H. Ellis, I.C.S. 73.

Marriage Customs.

As Muslims they have a proper form of marriage. "The only religious ceremony necessary is the *Nikka*, which consists in the formal conclusion of the contract before two witnesses and the Khazi who registers it." As Muslim Law does not countenance polyandry of any kind, the moment a non-Muslim embraces Islam she cannot marry without conforming to the rules of the Muslim Law; for example, a Mopla cannot marry a Non-Kitabia[1] woman, and if a female, she cannot marry any one except a Muslim. Hence even from the earliest times,[2] marriage among the Moplas has been a well-recognised institution.

The marriage customs of the Moplas are peculiar. There is little corresponding to them among the generality of the Muslims in India. First of all, it is not the father of the bride but her Karnavan that takes the initiative in arranging a marriage for her. In this as in one or two other respects, they may be compared to the Nambudri Brahmins of the West Coast.[3] The first thing of importance is the settlement of the dower and the dowry,[4] known as Kaipanam and Stridhanam. The amount varies with the status of the contracting parties.

In the Laccadive Islands marriage is arranged by the Karnavans of both the parties, while in the case of subsequent marriages in the case of males he is allowed to arrange it for himself. Among the higher classes, marriage is generally performed in the bride's house[5]. The initial expenditure for the marriage falls upon the bride's family, but subsequently the bridegroom has to make good this amount. In the words of Ellis, "This he does under a remarkable system of co-operative borrowing. He collects rice from all his relatives and friends on condition of repayment to them free of interest later under similar circumstance. Such a contribution of rice on condition of repayment upon the occasion of some ceremony in the lender's house is known as a *bir*. It is a recognised system of borrowing. Regular accounts of the transactions are kept. If the loans are not repaid, the amounts are recoverable by suit and they can form the subject of a *vasiyath*[6] to children or anandiravans."

(1) *i.e.* a woman whose religion does not involve belief in a revealed book as the Koran or the Bible.

(2) (*a*) Duarte Barbosa. pp 74-75, Vol. II, and see also the foot-note, Vol. II, p.75.
(*b*) Zilla decision, 1858, Appeal Suit No. 98.
(*c*) Zilla decision, 1853, Appeal Suit No. 168.
(*d*) Day's The Land of the Perumals, p, 371.
(*e*) Cochin Castes and Tribes, p, 464 by L. K. Anantakrishna Iyer.

(3) Cochin Castes and Tribes. Vol. II, p. 184, by L. K. Anantakrishna Iyer.

(4) The only other communities on the West Coast who follow this practice are (*a*) the Nambudri Brahmins and (*b*) the Syrian Christians. But a Mopla dowry differs considerably from the usage prevailing among these castes.

(5) If she is from the lower ranks it is performed in the Mosque.

(6) A Vasiyath means a will.

After the settlement of the dowry, a day is fixed for the marriage and, as a rule, the ceremony of *Nikka* takes place of an evening in the bride's house. Immediately after the marriage, the bride,(1) still wearing the veil, hands over to her husband a sum of money, her Kaipanam, which may vary from Rs. 10 to Rs. 10,000 according to the pecuniary circumstances of her Tarwad. The bride and the bridegroom are then led to a room where they are left strictly to themselves for a time: and when he quits it, he gives her a sum of money known as Kaikattupanam (2). It is a gift of money to her varying in amount from Rs. 11 toRs. 101. In the Laccadive Islands(3) the bridegroom has to make a present to the bride of a fixed number of clothes, which in some cases may be quite a costly gift. He, however, collects it from among his relations, and in his turn he has to give back to each of them a cloth of equal value on a similar occasion.

Ordinarily cohabitation begins after the marriage is over and the bride, generally, continues to live in her Tarwad house(4) while the husband visits her there. This is the usage in North Malabar, in the Laccadive Islands, in the town of Calicut and practically all along the coast from Ponnani upwards, as also among the Marumakkathayam Moplas of Travancore. In the interior of South Malabar, however, the custom is just the reverse. The wife lives with her husband till the dissolution of the marriage by death or divorce. Even here leaving aside the Palghat taluk, which can hardly be said to represent Malabar proper, and the sparsely populated taluk of Wynad, it is not uncommon to find some Mopla families living in the strict Marumakkathayam way. It may be observed that the practice among the Moplas of North Malabar is diametrically opposed to what is now usually followed by the Nairs of North Malabar among whom the practice is for the wife to live with her husband in his Tarwad house. But the Nairs of South Malabar still adhere to the old rule. Further, in the North, Mopla boys are usually married at the age of 18 or 20 and the girls at 14 or 15, while, in South Malabar, boys are married between 14 and 18 and the girls between 8 and 12. In some cases girls have been known to be married at the age of two and a half. And in the Laccadive Islands boys are generally married as in North Malabar, while girls are married between the age of 10 and 12.

(1) Here also some analogy is obtained from the practice of the Nambudri Brahmins. Cochin Castes and Tribes—Vol. II, p. 189, by L. K. Anantakrishna Iyer.

(2) In the Tarwad of the Bibi of Cannanore, this amount is usually Rs. 505.

(3) See A Short Account of the Laccadive Islands, and Minicoy.—by R. H. Ellis, I.C.S., p. 72.

(4) A Mopla wife in North Malabar seldom leaves her tarwad unless the husband is rich enough to build her a separate house for her exclusive use. She is not, however, averse to visiting her husband in his Tarwad occasionally and as a casual visitor.

Rules restrictive of inter-marriage.

A word may be said here as to the rules restrictive of inter-marriage among the Moplas of North Malabar—the prohibition as regards consanguinity, affinity, and fosterage. It is customary to create the bond of fosterage between the members of the Tarwad itself for various social reasons.(1) In Marumakkathayam Law, the rule is exogamy, that is to say there can be no valid marriage between persons of the same Tarwad. There can be, for instance, no cohabitation between a man and his maternal aunt's daughter, because they are both descended from the same female ancestress in the female line. Under the Muslim Law, however, such a marriage is perfectly valid. In fact, among the generality of the Muslims in India, cousin marriage is so common that they are nearly endogamous and, as a rule, marry within the tribe or clan. The Moplas of North Malabar closely follow the Marumakkathayam usage in this respect, so much so, that to marry within the Tarwad is regarded by them as bordering on incest. There has not been one single instance among the Marnmakkathayam Moplas of Malabar where this rule has been infringed except in the case of one Tarwad in South Canara, which is socially looked down upon by the others. This usage is invariably observed in all cases where matriarchy is practised. In Malabar, in the Laccadive Islands, in Cochin, Travancore, South Canara,(2) and the Malay Archipelago (3), all those who follow matriarchy whether Hindus or Muslims, practise exogamy.

Kaipanam.

Among the incidents of a Mopla marriage, Kaipanam and Stridhanam deserve special notice. Kaipanam or Kasipanam,

(1) The Moplas adhere to the Muslim Law of fosterage strictly.

(2) The rule of Nepotism obtaining among the people living in South Canara is known as the Alivasanthana Law, which is practically similar to the Marumakkathayam Law. It may be noticed that there are no Mopla Tarwads in South Canara which follow Aliyasanthana Law.

(3) In this connection, let us compare the practice prevailing among the matriarchal Malays. Like the Moplas they observe the rules of Muslim Law as to marriage to some extent. "The law of marriage and divorce is the only branch of Muhammadan Jurisprudence that is fully recognised in the Straits Settlements Courts." (See R. J. Wilkinson, the author of "Papers on Malay Subjects" Part. I. p. 60.) The rule they follow is exogamy. To quote from the Journal of the Royal Asiatic Society:—The "Sakai" or "Waris" adopted the tribal system introduced by the Menangkabau settlers and are now termed "Beduanda" as a tribe. They cannot inter-marry. Thus the women of the Waris tribe must marry into the Menangkabau tribes. But the children of the marriage are "Waris." (See Journal of the Straits Branch of the Royal Asiatic Society, 1887-1889. No. 19. p. 39 and also pp. 36—37) Again Dr. Wilken has the following observations on the subject:—"This prohibition of marriage within the tribe, known to ethnologists by the name of exogamy, exists, as we have briefly noticed, among the Bataks and among the Malays of the Padang Highlands, as well as among the Alfuros of Ceram. Further, we meet with it among the people of Nias, the Alfuros of Buru and the Timorese. Marriage with a member of the same tribe is regarded as incest by all these peoples who practise exogamy." (Papers on Malay Subjects, By Dr. D. A. Wilken, page 15, para 25, reMuhammadan Malays of Menangkaban in Sumatra).

as it is sometimes called, is money given by the bride to the bridegroom after the wedding, out of funds supplied to her by her Karnavan. In South Malabar the word Kaipanam is not in use. Here they call it Sridhanam. In the Laccadive Islands, off the coast of Malabar, the usage of either Kaipanam or Stridhanam does not exist.

In North Malabar the practice is gaining ground for the father of the bride and her Karnavan to share the burden of providing the Kaipanam. Ordinarily they go in shares, half and half, although from the legal point of view the Karnavan is the person primarily liable. But it all depends upon the wealth of the bride's Tarwad and her relations with the Karnavan. If the bride's Tarwad is rich and her Karnavan well disposed towards her, he would provide the whole amount : (1) and, similarly, if the father is rich and the Tarwad poor, the former would bear all the expenses of the marriage.

Kaipanam is in the nature of a loan given by the wife and her Tarwad to the husband who has merely the usufruct over it. As such, he is legally bound to return it on the dissolution of the marriage by death or divorce.(2) The amount in the husband's hands does not carry interest. His liability is only to return the exact amount lent to him. In some cases, particularly among respectable Mopla Tarwads, the claim to Kaipanam is frequently waived, as for example, in the family of the Aly Raja of Cannanore. The Tarwad of the husband is not under any liability to return the amount, unless it has derived some benefit out of the Kaipanam ; hence, if the husband happens to die insolvent, the wife or her Karnavan will have no means of realising the debt, since his liability is entirely personal. In such cases it will be futile to sue for it : for, if he were to die rich, all his self-acquired property would devolve on his heirs—*i.e.*, to the wife and children under the Mopla succession Act (3) but if he were to die insolvent, Kaipanam, being only a personal claim, cannot be recovered.

Stridhanam.

Stridhanam is the expression used by the Moplas of North Malabar to denote a marriage settlement of landed property to a female member of a Tarwad in lieu of maintenance. Literally it means "Woman's property," a term borrowed from the Hindu Law : while the Moplas of South Malabar use it meaning any

(1) In the family of the Aly Raja of Cannanore, for instance, the father of the princess in the Arakkal Tarwad does not as a rule contribute anything either towards her marriage or kaipanam.

(2) (a) 36 Mad. 385 at p. 386 (1911).

(b) See also Sundara Iyer's book on Malabar Law p. 237.

(3) Madras Act No. I of 1918.

property whether movable or immovable given as a gift to the bride as her marriage portion. The modern practice in North Malabar is to make an allotment of some lands belonging to the Tarwad in favour of the bride by a registered deed indicating the peculiar nature of the property, and that it is given to her in lieu of maintenance. In that case, the position of the husband is only that of an agent or manager on behalf of the wife in respect of its management.(1) It is also usual for the Karnavan to inform his tenants occupying the lands given as Stridhanam to attorn to the husband, while the latter simply makes an acknowledgement in writing that he is in occupation of the lands. In this manner, he is put in direct touch with the lessees of the Stridhanam property, and thence forward he is in sole charge of it until the dissolution of the marriage. And in a few cases of which we are aware, no such separate provision is ever made : the Karnavan in its stead makes a periodic distribution of rice to the husband enough to supply the wants of the family.(2)

The object of awarding Stridhanam is to enable the husband to maintain the wife and the children by the marriage out of the income of the Tarwad-lands. In other words, it may be said that the Karnavan representing the Tarwad is the donor; the husband, the sole trustee, to hold in trust for and on behalf of the beneficiaries and the children that may be born to him by the marriage. Virtually the husband is in the position of a trustee with reference to the Stridhanam lands in his charge. And, as a rule, so long as this settlement lasts, the Karnavan does not concern himself any more towards her maintenance and of the children by the marriage.

Among the Moplas of North Malabar, Stridhanam varies in different places and even in different families. There are instances, for example, where it is given to a girl in a Tarwad, who in her turn hands it over to her daughter as a marriage portion. In certain cases all the lands are not thus given away, but they are divided among the daughters, each receiving a part as her share. Again, in some others, such a division is not made; but her Karnavan makes a fresh allotment of Tarwad lands on every such occasion allowing the original recipient to retain her Stridhanam intact, as for instance, in the Keloth Tarwad, a branch of the Keyi Tarwad of Tellicherry.

Next let us consider briefly the two prevailing views on the subject of Sridhanam and Kaipanam. It is said that it devolves on the Karnavan of the Tarwad when the marriage is dissolved

(1) This is the usage, for instance, in the well-known Keyi Tarward as in the Thylakandi and other rich Tarwards, of Tellicherry.

(2) In the case of the Aly Raja's family, no Stridhanam is given : but the girl, as well as her husband and the children by the marriage, are all maintained by the Tarwad of the Aly Raja.

either by death or divorce. The adherents of this view hold that Stridhanam being only a temporary grant made at the marriage of a junior member in the Tarwad becomes *ipso facto* void when the purpose for which it was granted ceases.(1) It is further alleged that since ultimately the Karnavan is the person primarily liable to maintain every member of the Tarwad, it is immaterial whether he continues or not the allotment for separate maintenance in the case of a divorced or widowed female member of the family. They urge that such grants being made purely for maintenance, which a Karnavan is always entitled to make, they may be resumed if the circumstances so require.

As opposed to this is the view that on the dissolution of the marriage the Karnavan is not entitled to resume the Stridhanam lands so long as the woman or any of her descendants are alive; at any rate he cannot do so without making some other adequate arrangements(2) for their maintenance. The advocates of this rule urge that Stridhanam being in the nature of a trust the fact that the trustee has ceased to exist will not make the least difference to the trust itself as long as the beneficiaries exist. Further they hold that justice and equity demand that the woman and her children are not to be deprived of their possessions just at the very time when they need them most. It is enough for our purpose to state here that the latter rule is more equitable and commands the greatest legal support.

It remains now to consider one more incident of Stridhanam prevailing among the Moplas of North Malabar. The grant is not to be taken as a complete discharge, once for all, of the liability of the Tarwad in respect of maintenance as against the grantees. For, in the first place, it is usual to grant a further instalment of lands as Stridhanam in case a female member in the Tarwad marries again, after the dissolution of a prior marriage, a person of higher status than the first one. Further, we may refer to the usage already noticed of granting additional Stridhanams on the marriage of each of the daughters of the original recipients. This practice proves that the marriage settlement is not to be taken as final.

As mentioned previously, Stridhanam, whether movable or immovable, is a present given to the bride on the occasion of her marriage, either by her father, brothers, or other relations. Ordinarily no immovable property is given. It is not returnable to the donors as it is a gift to the wife; being her property it devolves on

(1) (a) 36 Mad. 885 at p. 386. (1911). (b) Malabar Law by Sundara Aiyar, p 287.
(2) (a) S. A. 1810 of 1916 referred to in Malabar Law by Sundara Iyer p. 237.
(b) S. A. 169 of 1907 (Unreported).
(c) S. A. 563 of 1905 (Unreported).
(d) In the District Court of North Malabar this rule has been consistently followed from the years 1870 onwards.
[*See* Appeal Suit No. 447 of 1920, District Court—Tellicherry].

her heirs according to the Muslim Law. This is the usage all over South Malabar even among the Marumakkatayam families.(1)

STRIDHANAM—A GIFT TO THE BRIDE.

We may now make certain generalisations from what has been said already. It will appear that, except in the Chirakkal and Kotayam taluks and among the Marumakkatayam Moplas of Kurumbranad taluk in North Malabar, Stridhanam or Kaipanam is treated as a gift to the woman. Even here it is not unusual to find certain families where the Stridhanam-grant is given as a gift to the bride.(2) Further in the Laccadive Islands, where all are followers of Marumakkatayam, this institution is unknown.(3) In other words in no Marumakkatayam-Mopla family outside North Malabar is there the usage of regarding Stridhanam otherwise than as a gift to the bride. Taking the Moplas as a whole from Travancore in the South to South Canara in the North including all those inhabiting the Laccadive Islands, the Moplas following matriarchy are a homogeneous class with customs and usages peculiar to themselves. There is no essential difference between the customary law of the Moplas in Travancore for instance, and those living in the Laccadive Islands. This being so, the question naturally arises as to why there should be this difference in the matter of Stridhanam. Again, we may mention that, historically speaking, there is no reference made to this institution among the Moplas by any writer of repute right down to modern times. Hence it may be stated that, originally, the institution of Stridhanam and Kaipanam never existed; it is only a later accretion—a custom of modern growth. This is the conclusion we are led to for the following reasons.

Firstly, the system of Marumakkatayam followed by the Moplas is essentially a Hindu institution of which the Nairs are the principal adherents. Neither the latter nor any of the other castes following the rules of Nepotism have anything corresponding to this Mopla institution and it may be remembered how closely the Moplas have been following the true principles of matriarchy; in a sense it may be said, even more strictly than the Hindu Nairs themselves. For according to the strict letter of the Marumakkatayam Law, no junior member has a right to claim separate maintenance from the Tarwad, and the grant of Stridhanam to a member in the Tarwad is essentially a provision for separate main-

(1) A word may also be said as to the usage prevailing among a section of the Moplas of Travancore inhabiting Edava and four other villages on the coast near Quilon. These alone among the Moplas of the Indian States of Cochin and Travancore follow Marumakkatayam while the rest are strict adherents of Muslim Law. Among the Marumakkatayam Moplas of Travancore, the practice is to give Stridhanam to the bride who takes it as a gift. It is similar to the usage in South Malabar.

(2) For instance, among some Mopla Tarwads in Perungulam, Panur, Olavilum, Chokli all suburbs of Tellicherry in North Malabar.

(3) *See* A Short Account of the Laccadive Islands and Minicoy—by R. H. Ellis, pp. 72, 78.

tenance. Such usages as Stridhanam have a tendency to disrupt the unity of a Murumakkatayam joint family. We are strengthened in this conclusion when he consider the custom prevailing among the Moplas in the Laccadive Islands and among the matriarchal Malays, among whom Stridhanam is unknown. Again, let us take the usage prevailing in this respect in the Tarwad of the Aly Raja of Cannanore, whose family traces descend to the 11th Century A.D. It is not the custom in this family to give Stridhanam at all. If the Moplas of North Malabar had this institution from time immemorial, the absence of it in the noble family of the Cannanore Raja is not easily explainable, except on the hypothesis that Stridhanam is a usage of modern growth.

It is not easy to state with any degree of precision as to how this custom arose. But a near approach to a solution of this problem is possible only by considering how far it is an expression of the social life and habits of the Moplas. We will, for this purpose, refer to some aspects of the life of the Moplas as it is ordinarly lived day to day.

The Moplas are to a large extent merchants. As every one knows, some capital is essential for any commerical venture. The institution of Kaipanam or Stridhanam admirably supplies this need. Let us, for instance, take an ordinary Mopla Tarwad A junior member in the family, so long as he remains unmarried, has no other clain on it but the right to be maintained in the family house. He has not, ordinarily, even a right to separate maintenance. Life in a Tarwad is largely communal, the Karnavan having the exclusive control over all its affairs. Hence there is not much scope for him to start on a career of his own. But he has not long to wait, the usage in Malabar in this respect being favourable to early marriages. Scarcely within his teens, he finds himself the father of a family of wife and children with the consequent stimulus to work for a living. Kaipanam supplies the needed capital while Stridhanam relieves him of the burden of maintaining his family. Further a married female among the Moplas lives in her Tarwad house and the existence of this custom still further relieves him of the trouble and vexations of running a separate home.(1) Customs and usages are only the product and expression of the needs of a society : there is a method in their growth and decline.

(1) As regards the Moplas of French Mahe, a small settlement on the coast in North Malabar, these are adherents to the system of Marumakkatayam Law like the Moplas in British Malabar. Therefore, what is said above is also equally applicable to the Moplas living in French territory. The same rule will apply as to what is said in the subsequent pages, unless the contrary is mentioned. But they have different tribunals to adjudicate their causes, which are of course not bound either by the decisions or the enactments applicable to British India, although it must be said to the credit of the French administration that they generally pay a great regard to the principles governing the decisions in the British Courts.

CHAPTER V

SECTION I.

Law of Guardianship and Maintenance

The Moplas of North Malabar have certain features peculiar to themselves in the matter of Guardianship and Maintenance also. Under the Shafi Law, it will be observed, the father is the guardian of a Mopla male under the age of majority and of a virgin girl of whatever age for purposes of marriage. But in North Malabar, the usage is the Karnavan is the guardian.[1] Generally speaking it is he that selects the bridegroom or the bride as the case may be; it is he that settles the dower, Kaipanam, and Stridhanam; and it is he that performs the marriage. It is true that, as a rule, the father is also consulted but the deciding factor is no doubt the Karnavan. In a large majority of cases the father plays only a formal part. This is the practice among the Mopla families in North Malabar, and in the Laccadive Islands,[2] where the rules of matriarchy are observed even more rigidly than on the mainland.

In South Malabar the rule is, as might be expected, in favour of the father: and among the Marumakkathayam Moplas living here the rules of Muslim Law are slowly gaining ground for with them the rules of Nepotism may be said to be in the melting pot. Further, the Mopla Tarwads in South Malabar and Travancore are neither so rich nor so influential as those in North Malabar.

For purposes of custody of a minor, the rule in North Malabar is very much in favour of the Karnavan, who maintains the minor members in the Tarwad, educates them, and exercises most of the functions of a father, for Marumakkathayam Law knows no guardian other than the Karnavan.[3] As to this there is almost overwhelming authority and it has been held again and again, "that a

1. (*a*) Malabar Gazetteer, p. 197,

(*b*) Zilla Decision 1853, Appeal Suit No. 168.

It was held that the Karnavan of the bridegroom is responsible for the dower (or mahr) debt of the wife in case of the death of the husband.

2. See A Short Account of the Laccadive and Minicoy Islands—by R. H. Ellis, p. 72.

3. In Malaya also the rule is the same. To quote Dr. Wilken, "at the head of the household stands, the mother's eldest brother. This person, the uncle on the mother's side, *mamak* as he is called, has the rights and duties of a real father in respect of his sister's children, his *kamanakan*. The father himself, as not belonging to the family, has no authority over his own children. He in his turn, at least if he be an eldest brother, stands at the head of his *kamanakan*, his sister's children."

(Papers on Malay Subjects by Dr. Wilken, p. 20.)

Mappilla father is not entitled to the custody of his children if he follows Marumakkathayam Law."[1]

As regards the property of a minor in a Tarwad, the Karnavan is the guardian. Thus it has been held that no guardian can be appointed over the property of a minor under the Guardian and Wards Act, for the minor has no property in the Tarwad for which such a guardian could be appointed.[2] Again the guardian for the individual property of a Mopla minor in a Tavazhi is the branch Karnavan usually the eldest brother or the mother and sometimes the Karnavan of the main Tarwad. It will be observed it is not the father.

The Law of Maintenance.

In North Malabar, the usual practice among the Moplas is for the wife to live in her Tarwad house: and under the general Principles of Marumakkathayam Law, she has to look to the Karnavan of her Tarwad for maintenance[3]. Further, it is more common to award separate maintenance[4] when married than when single. Again, it will be observed, in case a Mopla woman lives with her husband in a separate house, built by her husband for her exclusive use, she would not thereby forfeit her right of maintenance by so doing.[5]

Now it may be asked, whether there is any liability on the part of the husband to maintain his wife, when she is living in her Tarwad house. It has been held that she is not entitled to claim it unless she resided with her husband in his house the reason alleged being that, as the claim was one entirely found ed on the principles of Muslim Law, she can take it only subject to the obligation of residing with her husband in his house if he requires her to do so.[6] But in the

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1. (*a*) Cr. R. Case, No. 318 of 1925 (Unreported).
   (*b*) *In re* Moideen, 25 M. L. J. 355—(1913)
   (*c*) Cr. R. Case, No. 349 of 1913 (Unreported).
   (*d*) See also 7 M. H. C. R. 179 at p. 181 (1873). Thathu Baputty v. Chakayath Chathu.
2. See Malabar Law by Sundara Iyer, p. 39.
3. (*a*) Kunhammatha v. Kunhi Kuttl Ali, 7 Mad. 283 at pp. 285 and 236 (1883).
   (*b*) Kunchi v. Ammu, 36 Mad. 591 at pp. 592 and 593 (1912).
4. (*a*) Govindan Nair v. Kunju Nair, 42 Mad. 686 at pp. 687 to 689 (1919).
   (*b*) Maradevi v. Pammakka, 36 Mad. 203 at p. 212 (1911).
   (*c*) Bappan v. Makki, 6 Mad. 259 at pp. 261-262.
5. (*a*) Govindan Nair v. Kunju Nair, 42 Mad. 686 at p. 687 (1919).
   (*b*) Maradevi v. Pammakka, 86 Mad. 203 at pp. 212 and 213 (1911).
6. (*a*) Kunhi Pathumma v. Moossan Manwad, 13 Indian Cases 800 at p. 304 (1911).
   (*b*) All the same the practice is gaining ground among the well-to-do Tarwads in North Malabar for the husband to maintain his wife, even though she is living with her maternal kindred for purely social reasons.

family of Bibi of Cannanore the practice is to maintain both the junior princess and her consort out of the Tarwad funds.

Secondly, as regards maintenance of the minor members in a Tarwad, the liability, in the first instance, rests with the Karnavan of the Tarwad to which they belong. They are to be maintained, as already noticed, out of the Stridhanam property in the hands of their mother. It will be observed, there is an obligation on the part of the father of the children to maintain them under Section 488 of the Criminal Procedure Code. This liability does not cease, even though the latter belong to a rich Tarwad and are living there with their mother and their Karnavan. As remarked in one instance, "the fact of the petitioner being willing to take the boy and maintain him has nothing to do with the liability to give the boy maintenance when the boy is living with the natural guardians."[1] Lastly, as regards the other members the principle is the same and it is subject to the rule that every Anandravan, ordinarily, is entitled to be maintained only in the Tarwad house[2] excepting the married members. But the liability of the Karnavan to maintain the junior members in the Tarwad is not a personal one. In the Laccadive Islands also the rule as to guardianship and maintenance is similar to the customs prevailing on the mainland. But in these Islands[3] the Criminal Procedure Code is not in force as also in French Mahe and Travancore. In Travancore, there is this additional factor to be taken into account. Most of the Mopla Tarwads here are not rich, hence as a matter of fact the husbands usually maintain their wives and children, *even* though they live in their Tarwad houses.

SECTION II

Muslim Law not suited to a Matriarchal Society.

The Law and usage of the Moplas as to guardianship and maintenance is intimately connected with their social life. No better illustration of this principle could be found than a Mopla Tarwad. Given a Marumakkathayam joint family with a Karnavan at its head, it is next to impossible to follow most of the precepts of the Muslim Law.

Let us, for example, take a typical Mopla Tarwad and examine briefly the life led by its members day after day. To begin with, there is the Tarwad home, where live a motley group of persons, men and women, boys and girls, all claiming descent from a female ancestress according to the rules of Nepotism. On the top of it all is the inevitable Karnavan, the eldest male member in the group. Besides, there are the husbands of the married women in the Tarwad, who along with their children live in separate apartments in the house.

1. Cr. R. C. No. 349 of 1913.
2. Kunhamatha v. Kunhi Kutti Ali, 7 Mad. 233 at pp. 235 and 236 (1883).
3. See A Short Account of Laccadive and Minicoy Islands by R. H Ellis, I. C. S., (Appendix VI) p. 115.

Among these, it is hardly necessary to mention that the Karnavan is the very pivot on which the entire Tarwad machinery turns. Being the sole agent, manager, trustee and chancellor of the Tarwad Exchequer, and generally, a person of advanced years, he commands a respect and wields an influence, of which none but those who have lived and moved among them in their native homes could adequately realise. In a matriarchal joint family his word is law. Ordinarily he spends his time at home, while he is usually assisted in the management of the Tarwad affairs by the senior Anandravan or some other person in the Tarwad in whom he has confidence. The other Anandravans will consist of either the adult married males or minors. The former will hardly live in the Tarwad itself; for according to custom, their usual abode is with their wives and children. So that it will be seen that the persons who actually live in the house at a given moment, besides the Karnavan, will consist of minor children, their parents and the divorced or widowed women of the Tarwad.

Hence, it will be seen, as between the Karnavan, the father and the mother of the minor children, the position of the father is at best only that of a guest, while the mother and her children are maintained out of the Stridhanam Tarwad property. He may certainly be treated with some indulgence and nothing more. In other words, he has no *locus standi* in the family residence of his wife. The mother, on the other hand, being a member of the Tarwad and practically a permanent resident in it, will command a greater influence than her husband, who is, after all, a stranger to the family. But the Karnavan, having the entire charge of the Tarwad funds is not a person whom a resident or a junior member in the family could afford to neglect. Therefore, the parents of the minor children will only be too anxious to be in the good graces of the Karnavan, especially if it is remembered that guardianship and maintenance is more a duty than a right. By remaining in his good books, they have everything to gain both for themselves and their children, while by opposing him and asserting their rights they will only be alienating his sympathies and losing his favour. Not only that, the displeasure of the Karnavan might lead them to a worse plight entailing social ostracism by the other members in the Tarwad.

There is another aspect of the case: the Mopla males frequently travel far and wide in the interest of their trade; they are known to extend their activities as far away as Rangoon, Singapore and Penang, not to mention Ceylon and distant places in India. While on business they have to be away from their wives and children whom they now and again visit for a time. In their absence, their families are left in their Tarwad house and the Karnavan looks after them.

CHAPTER VI

SECTION I.

Law of Coparcenary and Succession.

The law of coparcenary is, as it were, the corner stone of the Marumakkathayam system; for group ownership and group succession are the chief characteristic features of a Tarwad. Hence, in spite of the inroads made upon the customary Law of the Moplas at the present day by Muslim Law on the one hand and the enactments of the Legislature on the other, the rule that governs the devolution of the Tarwad property is survivorship. In other words, in every Mopla Tarwad a person acquires rights in it by birth, that is to say, right of Co-ownership in the Tarwad property and the right to have a share when partition is agreed upon by all the members in the Tarwad. The right of Co-ownership includes a bundle of rights, chief of them being the right to maintenance. This is the usage among the Moplas following Marumakkathayam Law in Malabar and Travancore.

In the Laccadive Islands, however, although the principles as to the law of coparcenary and succession are the same as in the main land, yet in respect of partition there are a few slight variations. It will be remembered, that every Tarwad is composed of Tavazhis or groups of persons descended from a female ancestress, and virtually forming a Tarwad within a Tarwad. As a rule, none of the Tavazhis individually could demand compulsory partition of the Tarwad property, unless all the other Tavazhis agree to it. Even in the Tavazhi itself the same rule applies with regard to any property held jointly by the persons comprising it.[1] In the Laccadive Islands, where there is no such thing as *putravakasam* property[2] as understood in North Malabar, the rule against compulsory partition is not applicable. Here there are only two kinds of property, either Tarwad property or individual property. The latter is as a rule governed by Muslim Law. Hence, when property consisting of the self-acquisitions of a person is given as a gift to the members of a Tavazhi, they take it as tenants in common and not as joint-tenants as in North Malabar. Therefore a donee of a *putravakasam* gift can claim partition of his or her share in accordance with the rules of Muslim Law.

1. In the French Territory, the rules as to the partition of individual property of a Tavazhi, or *putravakasam* property as it is called, are not so rigid as in British Malabar. Here, any adult person in a Tavazhi could claim a division of *putravakasam* property even against the will of the other members comprising it. In short, the rule against compulsory partition does not apply in French Mahe. Where a partition takes place, the division is *per capita*, males and females taking equally.

2. That is to say, property given by a father to a Tavazhi consisting of wife and children, and held jointly in the Marumakkathayam way.

SECTION II.

Strisothu.

The general rule all over the West Coast and in the Malaya Archipelago is, as mentioned elsewhere, the eldest male member in the Tarwad is entitled to be the Karnavan. But there are instances in which the head of a Tarwad is the eldest female member in the family. These Tarwads are known as Strisothu Tarwads. This may mean one of two things, that the property is owned and managed exclusively by the female members in the Tarwad, the males having only the right to maintenance, or that both males and females have equal rights, but the latter have exclusive rights of management over the Tarwad property. It may be said that strisothu Tarwads or Tavazhis, where females have exclusive rights of ownership and management are non-existent at the present day. The only form of Strisothu that is prevalent now is where males and females have equal rights, excepting that only the eldest female member has the right to be the manageress or the Karnavastri of the Tarwad. In many of the Strisothu Mopla Tarwads in Malabar, such a right is reserved to the females by a family Karar[1] entered into by all the adult members in the joint family.

Strisothu, it may be mentioned briefly, is one of those instances where the customary law of Malabar has been somewhat modified by modern decisions.[2] For there is nothing in the customs and usages of Malabar as such to prevent the existence of strisothu Tarwads properly so called, that is to say, Tarwads where the females are all in all and the males have only rights of maintenance; firstly, because in Marumakkathayam law, although males and females are said to be equal in all respects, it is recognised they are not equal in one particular, namely, while both the female members and her children in a Tarwad have rights over the family property, in the case of a male the rule is different: he alone can claim such rights, while his children could not. Further, as the phrase Marumakkathayam itself suggests, the descent in the family is always traced from a female in the female line. Considering the emphasis laid on the female element in the whole system of matriarchy, it will not be far from the truth to allege that an usage like *strisothu* is one which does not run counter to the spirit of the customary law of Malabar. This hypothesis is supported by a few early decisions,[3] which expressly admit the existence of the custom. It was remarked in one instance by Chief Justice Collins and Mr Justice Parker:—"Seeing that the instrument limits the descent of property to the female line and excludes

1. For instance, the Thoppil Tarwad at Calicut and the Nahas Tarwad at Parappanangadi (South Malabar).

2. S. A. Nos. 1493 and 506 of 1919 unreported. (F. B.)

(The question here was "whether according to the custom or usage prevailing among the Marumakathayam Mappilas of North Malabar property may be settled as *strisothu* on the female members of a Tarwad or Tavazhi to the exclusion of the males....held no such custom has been proved.")

3. (*a*) S. A. No. 1502 of 1894 (Unreported).
(*b*) S. A. No. 71 of 1919 (Unreported).

males at the same time forbidding partition we think the gift was of the class known as "*Stri Sothu*" or "*Henummula*," and that the intention was that the property should be held by the class of females jointly as a Tavazhi, with Marumakkathayam incidents; such a gift is valid for the estate given is one known to Marumakkathayam usage with reference to which it appears to have been made."[1]

In this connection it is interesting to observe that in the Island of Minicoy[2] alone (near the Coast of Malabar), where, be it observed, Muslim Law prevails, there is a curious custom which approaches Strisothu. In the words of Ellis: "Island law decrees that no man can have any claim to a house. It vests in the women of the family and the men of the family have only the right of residence and maintenance till marriage. On marriage a man passes to his wife's house and takes his wife's family name. A woman who ceases to reside in the family house for any reason *ipso facto* loses her claim to reside in it and cannot return."[3]

SECTION III

Succession in Marumakkathayam Law.

Let us now consider briefly the law of succession applicable to the Marumakkathayam Moplas. It is well to point out at the outset that in a matriarchal joint family originally there could be no individual property. In other words, in Marumakkathayam Law there could be no property belonging solely to a member in the family. Hence the earnings of the individual *ipso facto* belong to the Tarwad. Therefore, on his death no question could arise as to the rule of succession. It is needless to add that succession is only concerned with the devolution of individual property belonging to a member in the Tarwad and dying intestate.

It may be mentioned briefly as a general rule on the death of a member in the Tarwad intestate, his self-acquired property, if male, devolves on the Tarwad, and if female, on her Tavazhi. But since the passing of the Mopla Succession Act,[4] this principle no longer holds good to the Marumakkathayam Muslims,[5] for under the Act the Muslim Law is applicable. Prior to the Mopla Succession Act, however, the usage among the Moplas of Malabar varied in different places in the country. Beginning with North Malabar, the practice in a large majority of cases in the two northern Taluks of Chirakkal

1. Pudiyapurayil Bivi Umah v. Cheriyath Kutti, 8 Indian Cases, 567 (1894).

2. The Minicoy Island is inhabited exclusively by Muslims of the Shafi sect but they are not Moplas.

(See A Short Account of the Laccadive and Minicoy Islands by R. H. Ellis. I. C. S., p. 68).

3. See A Short Account of the Laccadive and Minicoy Islands by R. H. Ellis, I.C.S., pp. 76 and 77.

4. See Madras Act No. 1 of 1918. The Mopla Succession Act.

5. In French Mahe and Travancore, the Mopla Succession Act is, of course, not applicable. The usage in these places is that on the decease of a person in the Tarwad intestate whether male or female leaving individual property, the estate devolves on his Tavazhi.

and Kottayam has been that outlined above, that is to say, the self-acquired property devolved, if male, on the Tarwad and, if female, on her Tavazhi;[1] similarly in the Kurumbranad Taluk, particularly, in the towns of Badagara and Quilandy[2] in North Malabar. But in the interior, where Marumakkathayam Moplas are in a minority, no settled rule of inheritance prevailed; some families adhered to the principles of Marumakkathyam, while others followed Muslim Law.

But in South Malabar, as a rule, the usage has been in favour of Muslim Law even among the Marumakkathayam Moplas. So also in the Laccadive Islands,[3] the self-acquired property of a member in a Tarwad (which is known in some of the Islands as Tingaliricha or Monday, as distinguished from Velliaricha or Friday or Tarwad property) has always been devolving according to the principles of Muslim Law.[4]

It will not be out of place to mention briefly here a word as to the origin and growth of the rule as to self-acquired property. We have alluded on a previous occasion to the practice which prevailed in Malabar as early as the sixteenth century A.D.[5] whereby half the property devolved on the nephews, and the other half on the sons. The next stage in the development of this rule was reached when the whole of the individual property of a Mopla was governed by the rules of Muslim Law.. When this change took place, there is no means of knowing, but the first time the rule appears in its present form is in the early days of the British administration in Malabar. In the beginning its fate hung in the balance as the custom was not favour-

1. (High Court) Appeal No. 125 of 1885 (Unreported).

2. Even here there are cases of Mopla Tarwads where the mixed or 'piebald' system of inheritance prevails. (S. A. No. 2152 of 1915—unreported).

3. See A Short Account of the Laccadive and Minicoy Islands by R. H. Ellis, I.C.S.. p. 75 and the Malabar Gazetteer, p. 484.

4. In the Malaya Archipelago, the law in this respect is still very much in the grip of the customs and usages of the country. Regarding the law of succession among the Menangkabau Malays of the Padang Islands, Dr. Wilken, says "The husband's own property remains.....strictly separate from that of his wife.....at death, the rule is that the property of the wife reverts to her own family, her children, and so on.....since the married woman does not leave the home of the family, the property of the husband, brought by him at marriage, goes back to his family, to his brothers, sisters, and sister's children, and so on..... and what has been acquired by both together during time of marriage, and is therefore their common property is divided...one half going to the relatives of the deceased husband or wife, in the order just given, and the other half remaining with the surviving widower or widow.

Accordingly, as we have noted in passing, children do not inherit from their father. They can only receive gifts from him. Such a gift is called a *hibah*—it goes without saying that for the bestowing of a gift only the *harta pencharion* can be taken into account. But even these possessions, a man cannot dispose freely: he stands under the control of his future heirs, who even during his life may assert their claim to the prospective inheritance, and consequently are always on the watch to resist any alienation. Nevertheless it has gradually become the rule in many districts that at any rate half of the *harta pencharion* of a man can be transferred by gift or *hibah* to his own children." *Harta pencharion* means self-acquired property. (See Papers on Malay Subjects, pp. 21 and 22, by Dr. Wilken. And see also the Journal of the Straits Branch of the Royal Asiatic Society (1887-1889). No. 19, by Martin Lister Re: Negri-Sembilan, p. 49.)

5. Duarte Barbosa, p. 74, Vol. II.

ably looked upon by the British Courts, and an attempt was made to stifle it. The Judges proceeded on the principle that a dual system of inheritance or as Mr. Justic Holloway called it, "A piebald system of inheritance"[1] could not be allowed to continue in the same family, and finally the rule came to be as it is at the present day.[2]

SECTION IV

The Law and Usage of the Moplas with reference to their Sociology.

Besides the Moplas following the Marumakkathayam Law even those who profess to follow the Muslim Law prefer to work out the principles of that Law, setting themselves as it were into the frame-work provided by the Marumakkathayam system, with its Tarwad, the Karnavan and so on. We have dealt elsewhere regarding the conditions in Malabar, which have brought about the existence of the matriarchal system among the Moplas. We may now point out that this great love for an essentially non-Muslim system of Law is due partly to the fact that it tends to conserve property—a circumstance which is amply corroborated by what obtains in North and South Malabar. The Moplas in the north are, generally speaking, rich, being proprietors of big landed estates, while in the south they are mostly poor, earning their livelihood either as farmers or petty traders. The former live in the towns along the sea-coast, while their lands are in the interior, the land-tenures of Malabar being particularly favourable for absentee landlords. The Karnavan looks after the affairs of all the Tarwad property, thus leaving the junior members of the family free to exercise their skill in trade, for which they are eminently fitted. In short, in North Malabar with Marumakkatha-yam, on the one hand, and the peculiar social customs on the other, every factor seems to help in augmenting their fortunes.

While, in the case of Moplas of South Malabar, especially in the interior, agriculture is the main source of subsistence. Being poor and owning no landed property, they work as farmers living in detached homesteads in the midst of lands and gardens, the scene of their daily labours. While the man is out in the fields, earning his bread with the sweat of his brow, the woman, his wife, looks to the household and the children, who as they grow up also lend a helping hand to their parents. Thus it will be seen that the conditions in South Malabar are almost diametrically opposed to those prevailing in the North, and hence the Moplas of South Malabar generally con-

(*a*) A. S. 124 of 1851 A.D. Tellicherry, referred to in "Malabar Law" by Moore, p. 326.

(*b*) S. A. 269 of 1855, Sudder Court, referred to in "Malabar Law" by Moore, p. 326.

(*c*) A. S. 110 of 1861, Tellicherry, referred to in "Malabar Law", by Moore, p. 326.

(*d*) Kunhimbi Umma v. Kandy Moithin. See also *27* Madras 77 p. 79 (1903)

(*a*) See "Malabar Law, and Customs" by Moore. p. 326.

(*b*) Malabar Law. Sundaram Iyer. pp. 283-235.

(*c*) Assan v. Pathumma, 22 Madras 494 at p. 505 (1897)

form to the social conditions prevailing there. Here the circumstances seem to be in favour of Muslim Law, which, in its turn, with its minute divisions of property, helps only to perpetuate the very social system above described.

Again, let us take the origin of the rule as to self-acquired property, and consider it with reference to the life led by the Moplas of North Malabar. Under the rule of Nepotism obtaining among the generality of the Marumakkathayam Hindus in Malabar, the rule as to succession of the wife or children to the individual property of a person in a Tarwad could not arise. But with the introduction of the institution of marriage in a matriarchal society like that of the Moplas, this problem *ipso facto* arises We will presently discuss how even among some of the Marumakkathayam Hindus and also a few Marumakkathayam Christians who have adopted marriage, there are usages and customs on record whereby a portion at least of the estate of a man descends[1] to the wife and the issue by the marriage.

For this purpose we will examine very briefly the prevalence of the rule as to self-acquired property among the various Marumakkathayam communities in Travancore, *viz.*, the Ezhuvas, the Roman Catholic Christians and the Nanjinad Vellalas, and then deal with the origin of the rule among the Moplas.

The Ezhuvas correspond to the Thiyas of Malabar. They may be divided from the point of view of the system of succession and inheritance they have adopted into three distinct classes known as Makkathayam, Marumakkathayam and Misravazhi Ezhuvas.[2] We are here concerned only with the last. In the words of the Ezhuva Law Committee "they follow what is known as '*Misradayam*' or the mixed system of inheritance which is a blend of the Makkathayam and Marumakkathayam. According to this system the separate or self-acquired property of a man dying intestate is divided between his children and his Tarwad. Though their shares are commonly referred to as half and half, the share which as a rule goes to the children is a little over one-half. This is the only distinguishing feature of the mixed system. In all other respects the rules and incidents of the Marumakkathayam are followed ".[3] We may point out here that it is customary among the Ezhuvas to marry, which usage has been further confirmed by judicial decisions.[4]

Secondly, regarding the Roman Catholic Christians who follow Marumakkathayam, these are mainly converts from the Ezhuva community. It is enough for our present purpose to observe that they adhere to the rule " whereby a moiety of a man's self-acquisitions goes to his children, while the remainder goes to his Anandravars."[5]

1. This circumstance, it will be observed, is not peculiar to Malabar only. The same feature is observable even among the Matriarchal Muslims of the Malaya Archipelago.

2. These reside in the Trivandrum and Padmanabhapuram Divisions as well as in the Southern parts of the Quilon Division including the taluks of Quilon, Kottarakara and Pathanapuram.

3. Report of the Travancore Ezhava Law Committee (1919) page 3, para 6.

4. Report of the Ezhava Law Committee (1919) p. 9. para 20 (Travancore). Report of the Christian Committee (1912) p. 50 para 277. (Travancore).

Lastly coming to Nanjinad Vellalas[1] we find they are divided into two classes, the Makkathayees and Marumakkathayees. The latter, while ordinarily following the rules of Nepotism, have developed two peculiar usages as modifying the general law known as *Ookanthudama* and *Nankudama*. In the words of Pothen Joseph, "the wife and children of a deceased Nanjinad Vellala are entitled to a share in the family properties. This right '*Ookanthudama*' (inheritance by right of love) is ordinarily variable from 1/7th to 1/10th share of the deceased's share in the family properties.....And again '*Nankudama*' (the property or inheritance of a Nanka or woman) is the share given to a childless widow, as her share of her husband's properties."[2] Further it is well to note that among them custom ordains that they should marry.

In all these cases, one thing is aparent, that is when a Marumakkathayam community, whether Muslim, Hindu or Christian, adopts the institution of marriage, it often finds it necessary to create some means of providing for the wife and children. Essentially, it is the result of a consciousness of natural obligation which a marital tie invariably creates. This is no doubt one of the chief reasons for the development of this rule. Further in dealing about the Moplas the religious element also has to be taken into account as an important factor in the formation of the rule as to self-acquired property.

There is again another aspect of the case. When a person's self-acquisitions are the outcome of the joint labours of the husband and wife, as is usually the case among the Ezhuvas of Travancore and the Malays in the Malaya Archipelago, or even where the wife or her Tarwad has contributed to the whole or part of the capital, as for instance, among the Moplas of North Malabar, some provision is bound to be made sooner or later in favour of the wife and children. In so far as the husband is benefited, it is but fair that on his death a portion, if not the whole of the self-acquisitions, should be given to the wife and children This sense of equity and justice in the Mopla community may be said to be partly responsible for the development of the rule as to self-acquired property, which did not come into existence all at once, but only gradually, haltingly, through the centuries.

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1. The Nanjinad Vellalas live in the taluks of Thovala and Augasteeswaram in the Southern division of Travancore.

2. Marumakkathayam Law by M. P. Joseph (1926) p. 443.

CHAPTER VII

LAW OF DEBTS.

In respect of debts contracted by a Karnavan of a Tarwad, it is generally recognised from very early times that it is within his powers to pledge the credit of the family for necessary or beneficial purposes.[1] The whole of the Tarwad property is liable for a Tarwad debt properly incurred by the Karnavan.[2] At the present day, in the case of simple debts the rule in Malabar is that there is no presumption that they bind the Tarwad, the burden of proof being in the first instance on the creditor as in Hindu Law.[3] In Travancore, on the other hand, there is a presumption that any simple debt contracted by the Karnavan is for a purpose which is binding on the family.[4] Further, in Malabar it is a settled rule that it is not in the province of the Karnavan to pledge the credit of the family in pursuance of any trade in which he might be interested or to invest on his own initiative the family funds in starting a business.[5] This rule holds good for Mopla Tarwads, in which it is usual for the adult male members to take to trade. The reason is that the resources of the Tarwads are intended solely for the maintenance of its members and for the upkeep of the Tarwad property. So it has been held that "mercantile pursuits do not usually fall within the scope of the ordinary duties of a Malabar Karnavan."[6] This principle was affirmed later with this qualification that for trade debts to be binding on the Tarwad, "It must be shown that the business is a family business or that the members of the Tarwad consented to the trade being carried on behalf of and for the family."[7] Custom and law alike impose a restraint on the hands of the Karnavan from speculating with the Tarwad property.

But where a Tarwad consists entirely of adult members, the Karnavan could carry on commercial transactions with the express or implied consent of his anandravans, because it is open to all the members in a Tarwad to do jointly whatever they like with the Tarwad property. Naturally any risks they might incur in the

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1. (*a*) Kutti Mannadiyar v. Payanu Muthan, 3 Mad. 288 at p. 289 (1881).
   (*b*) Raman Padmanabhan v. Govindan Velayudhan, 9 Tr. L. R. 56 at p. 57.
   (*c*) Hindu Law by Strange p. 97.

2. Parrakil Kondi Menon v. Vadakentil Kunhi Penna, 2 M. H. C. R. 41 at pp. 41 and 42 (1864).

3. (*a*) S. A. 37 of 1844,
   (*b*) S. A. 95 of 1856 both referred to in Malabar Law by Subramania Sastri p. 82.
   (*c*) Kutti Mannadiyar v. Payanu Muthan, 3 Mad. 288 at p. 289 (1881).
   (*d*) Kuttan v. Kalliani, 40 Indian Cases 449 (1917).
   (*e*) Malabar Law by Moore pp. 169 at 170 (1905).
   (*f*) Hanooman Prasad Panday's Case, 6 Moore's Indian Appeals (P. C.) 398.

4. Krishnan Aiyappan v. Padmanabhan Raman. 21 Tr. L. Reports 289 at p. 255 and 9 Tr. L. R. 100 at p. 104.

5. Abdul Rahman Kutti Haji v. Hussain Kunhi Haji, 42 Mad. 761 at pp. 771 and 776 (1919).

6. S. A. 223 of 1887.

7. Abdul Rahman Kutti Haji v. Hussain Kunhi Haji. 42 Mad. 761 at p. 771 (1919).

course of such a commercial venture would have to be borne by the Tarwad to which they belong. Cases have come to our notice of Mopla families[1] who have carried on trade on the basis of a joint family business, instances where there were no minors in the family to clog the ambitions of the adult members.

It may be asked in the case of a Tarwad partly composed of minor members, whether all the adult members or a majority of them could carry on trade with the joint family assets by mutual agreement and thus saddle the Tarwad with liabilities. A debt or alienation of Tarwad property to be binding must be either for its benefit or for necessity; hence the mere consent of all the adult members is not by itself sufficient to make the debt or alienation binding on the Tarwad. In the words of a recent writer, "the major adult members alone cannot therefore alienate Tarwad property without proper necessity; for such an alienation would have the effect of diminishing the corpus of the property available for the maintenance of the Tarwad members and would prejudicially affect the rights of the minors. But if there are no minors in the Tarwad, an alienation without consideration and necessity would be binding on the Tarwad if made by all as all the members whose consent was required have joined. In cases where there are minors the majors who alienate Tarwad property are acting for themselves as well as for the minors as guardians and not in their own right."[2]

Again, instances may arise where a Tavazhi or a Tarwad becomes the owner of a running concern, as it may well happen in the case of a *putravakasam* gift by a person of the stock-in-trade to his wife and children. The latter then will constitute a commercial Tavazhi with the branch Karnavan as its manager. Here the Tavazhi will be liable for the debts contracted in the course of its business even though some of the members comprising it are minors, when it will be analogous to an ordinary joint family business under the general Hindu Law. Similarly it may be said that as regards a family business owned by a Tavazhi, the minor members in it will be liable for debts contracted in the course of such a trade. But then there could be no personal claims against them—nothing beyond their interest in the joint family trade.

Lastly, there is one other instance where Tarwad property is liable for trade debts where it is in the hands of the last surviving member of a Tarwad. Then it partakes of the nature of individual property and it is needless to add that its owner could dispose of it in any manner he likes.

A word may be said now as to the practice prevailing in the Laccadive Islands in this respect. Custom here gives more freedom to the Karnavan as regards Tarwad property. If the Karnavan were to trade with the assets of the Tarwad (it will be observed he is not bound even to consult his anandravans in the matter) it is liable for the debts incurred in the course of the business, provided it could be proved that the trade was carried on for its benefit.

1. For instance, Kariyat Tarwad in Badagara and Oliath Tarwad in Tellicherry and Cannanore.
2. M. P. Joseph's "Principles of Marumakkathayam Law." p. 220.

CHAPTER VIII

ADOPTION.

Under the Muslim Law, adoption is not recognised as a legal institution. An adopted son under the Muslim Law is simply in the position of a stranger or guest in his adopted family, and is not entitled to any rights in that family. In British India, however, adoption is recognised even among the Muslims, if it is based on custom as in the Punjab; among the Talukdars of Oudh, it is fully recognised by statute without distinction between Hindus and Muslims.

In Malabar, the custom of adoption is recognised as an institution among the Moplas following Marumakkathayam Law, although it must be admitted that this branch of the subject is not of much importance, for adoption is rare. The number of decisions on this aspect of the Mopla Customary Law could be counted on one's fingers. It may be here remarked that the word adoption is not generally used. It is said that affiliation, if found to exist among them, will be upheld. The difference between adoption and affiliation is this: that whereas in the former there is only one adopter and one adoptee, in the latter it is a case of a group of persons being affiliated to another group, the Tarwad. Besides, affiliation is an act devoid entirely of religious significance while the same cannot always be said as to adoption. It has been held that "there is no proper adoption among Moplas following Marumakkathayam rules; but when they make affiliation, they follow the rule of Nairs."[1]

It is said by some writers that adoption being unknown to the Muslim Law, the Moplas could not adopt in accordance with Marumakkathayam rules. But arguing from general principles it may be stated that there is scarcely a branch of Anglo-Muslim Law in which custom has not been recognised as binding and there is no reason why in Malabar this principle should not be adopted even in the matter of adoption. This subject no longer admits of any doubt, for there are a number of instances[2] of adoption among the Moplas of North Malabar, a fact further confirmed by judicial authority.[3]

Let us now briefly consider the principles governing the subject. In the first place, the Law of adoption even among the Nairs is much simpler than among the generality of Hindus in India. The rule that no spiritual considerations or religious ceremonies are essential to the

1. O. S. No. 15 of 1909 (Sub Court, Calicut).

2. To mention a few leading instances (*a*) The Khazi of Baliapatam; (*b*) Ponnambalath Paravaravan Kuttiatha of Kottayam village in North Malabar (*c*) and we may add that we have come across cases of adoption, which have never been the subject of litigation, and none of the witnesses we have examined in Malabar (and they are not a few) have ever denied the application of this branch of Hindu Law to them.

3. See H. C. Appeal No. 148 of 1911.

validity of an adoption prevents undue intricacy. Secondly, in Marumakkathayam Law, it will be remembered, there can be no valid adoption unless all the members of the Tarwad consent;[1] and usually an adoption takes place if the Tarwad is so reduced that it has among its members none but males, and females, who are past the age of child-bearing. Thirdly, an adopted person necessarily comes from outside the Tarwad and there is no limit as to the age[2] or sex[3] or number of persons; and sometimes there may be cases, where a whole family consisting of a mother and her children are adopted. As a rule, the usage among the Moplas is to affiliate as heirs their *attaladakam* women (i.e., women who have a reversionary interest in the Tarwad into which they are adopted), the object of adoption being purely secular to prevent the Tarwad from becoming extinct. Fourthly, an adoptee acquires all the rights of the natural born member of the Tarwad so soon as he or she is adopted so that, if the adopter is a female, she loses immediately her right of management in favour of a male adoptee. Fifthly, in Malabar regarding the question of the adoptee's interest in his original Tarwad property the matter is not free from doubt. In Travancore,[4] however, the rule is that if only some members are adopted they lose their rights in their original Tarwad, unless their rights are reserved at the time of adoption. But if all the members of the Tarwad as a whole are adopted into another Tarwad, they do not lose their rights over their property. Again, there is another rule as to adoption peculiar to Travancore, the confirmation of the adoption by the Sovereign to make it valid, which could ordinarily be secured only on payment of the prescribed *Adiyara* fees to the Government. This amount has to be paid by the Tarwad of the adoptee. But, it will be observed, the payment of the fees is not essential to the validity of an adoption.[5]

Cases of affiliation occur also among the Mopla Tarwads in the Laccadives as well; but the adoptees here while acquiring rights in the Tarwad into which they are adopted, nevertheless still retain their rights over their original Tarwad, and do not forfeit them, even though there is no express stipulation to that effect at the time of adoption.

1. Raman Menon v. Raman Menon, 24 Mad. 73 (P. C.) p. 81 (1900).

2. Subramanyam v. Parameswaran, 11 Mad. 116 at pp. 119-124 (1887).

3. (*a*) "Malabar Law and Custom," by Moore, p. 33 A. S. 21 of 1814, Prov. Court of Western Division.

   (*b*) "Malabar Law," by Sundara Iyer, p. 29 (1922).

4. Velayudhan Eswaran v. Ramaswami Iyer, 7 Tr. L. R. at pp. 72 and 73 and 79.

5. Principles of Marumakkathayam Law, M. P. Joseph, pp. 42 and 44.

CHAPTER IX

LAW OF WAKFS

SECTION I.

Religious and Charitable Endowments[1]

In Malabar Muslim religious and charitable endowments consist of (*a*) Mosques, which again may be sub-divided into (1) Jamat Mosques, (2) Ordinary mosques and (3) Srambis, (*b*) Thakiás and (*c*) Jarams, or Mausoleums.

Jamat Mosques.

Jamat Mosques are the most important of the three; for it is only in them that the Jumma or Friday congregational prayers of the week could be held. There is no important town or village in all Malabar where there are no Jamat mosques; and often there are more than one in the same town or village. These mosques can be differentiated from others in that they are as a rule bigger and more impressive.

Jamat mosques are managed by Mutawallis or trustees, who are generally in North Malabar[2] Karnavans of Tarwads, and the rule of succession among them is Marumakkathayam. Ordinarily these consist of four or five members constituting a board of management and one among them acts in the capacity of a chairman and exercises powers over these endowments in some cases far exceeding those of the rest. In Malappuram, for example, it has been held that the Pukoya Thangal, the president of the board of trustees of the principal Jamat mosque in the town, "enjoys in his capacity as superintendent or as it is called Khazi all rights of management relating to the Malappuram mosque" and further "that he is entitled to the charge of the mosque and its appurtenances with the right to execute necessary repairs and to control the lighting and other necessary services to the exclusion of the four Karnavans, the other trustees of the mosque.[3]

But generally the Karnavan-Muttawallis have equal powers and the voice of the majority pervails in matters of detail. Further, it may be mentioned here, so long as they are the Trustees, they constitute, as it were, different entities, and hence are exempt from interference from the respective Tarwads of which they are the heads in all matters appertaining to religious endowments, for the simple

1. We have dealt with this section somewhat at length for many of the conclusions reached in the subsequent pages are based on facts stated here.

2. In South Malabar, in important towns like Calicut, Malappuram and Ponnani, there are a good number of mosques managed by Karnavans of Tarwads. As to the practice prevailing in Ponnani see Kunhi Bivi v. Abdul Azeez, 6 Mad. 103 (1887) at pp. 106 and 107.

3. S. A. No. 1183 of 1916 (unreported).

reason that the Tarwad is not the Trustee. All the same the senior Anandravan of each of the Tarwads of these trustees has the right to succeed in office in his turn.

Secondly, there are mosques under the management of single Karnavans as well, the leading examples of which are those managed by the Ali Raja of Cannanore,[1] who is the sole Muttawalli of all the mosques in the town, of which there are a good number[2]. As a rule it may be said that in North Malabar mosques managed by single Karnavans abound; they are generally built by rich tarwads who also maintain them. Each successive Karnavan looks after the affairs of the mosque as the sole Muttawalli. These Mosques occupy a peculiar position; they are something between a public and a private Wakf. So far as the management is concerned no one other than the members of the Tarwad can interfere and the public are only entitled to enter the mosque for the purpose of prayer.[3] It has been held that in this type of mosques the rule of succession to the office of the Muttawalli is according to Marumakkathayam Law because the family followed Marumakkathayam Law in respect of their Tarwad property and this mosque being further found to be Tarwad property the same rule is applicable.[4]

Srambis.

There is another kind of mosques in Malabar known as Srambis[5]. They are small unpretentious buildings intended to serve as miniature mosques, which a traveller in Malabar can hardly fail to come across on his journey. The chief difference between a mosque and a Srambi is that the latter being a small structure, constructed in many cases on lease-hold land, may become converted during some period of its history into a private apartment or may even be demolished[6]. But a mosque, consecrated as it is as Wakf for public use, could not be built on land taken on a temporary lease. For under Muslim Law there could be no public Wakf of property other than one built on freehold land or at least on land with a permanent tenure.[7] There are also other features characteristic of a Srambi, but they are all connected with theological[8] doctrine.

1. It will be observed that nowhere in Malabar, except in Cannanore, one meets with mosques built with minarets after the fashion prevailing on the East Coast.

2. In the town of Cannanore, it is customary to leave in the hands of Ali Raja even mosques built by private individuals and he, in his turn, shoulders all the expenses connected with their maintenance.

3. H. C. Appeal No. 178 of 1887 (unreported).

4. S. A. No. 636 of 1897 (unreported).

5. Some Srambis are in the nature of private chapels.

6. (*e.g.,*) Nadakkal Srambi at Badagara.

7. See Ameer Ali, Muhammadan Law, Vol. I, page 266-267 (1912).

8. For instance (*a*) the Friday congregational prayers could never be held in a Srambi (*b*) Even a person under pollution (*i.e.,*) one who is not perfectly clean according to the rules prescribed by religion for the purpose, could enter a Srambi but not a mosque (*c*) Prayers of special importance could not be said in a Srambi, as there is none to lead the prayers as in other mosques (*d*) There is no burial ground attached to a Srambi as in the case of mosques.

Thakias.

As regards another kind of religious endowments in Malabar known as Thakias, they are the abodes of some religious person or *sufi* who by his great piety and austerity has won the respect of his neighbourhood, but at the same time has not attained sufficient spiritual eminence. On the West Coast Thakias are only second in importance to mosques and Jarams, and their number is very limited. Reference may here be made to the most important of them all—the Thakia at Kondotti in South Malabar. Close by is the residence of a well known Mopla religious leader, the Kondotti Thangal, reputed to be a Shia, though the fact is stoutly denied by the venerable person concerned. The thakia is his private chapel. It is the place where Muhammad Shah, his original ancestor, established himself about the end of the eighteenth century A.D., and the practice that has been followed ever since is that after the death of each thangal and before his burial his successor is taken to the thakia and installed there. The management of this institution with its large endowments vests exclusively with him. The thangal always appoints in his life-time his own successor from among the members related to him by blood and trains him in the ways of a 'Shaikh' or the priest of a mystic sect. The rule followed in the matter of succession to the religious office,[1] it will be observed, is neither according to Marumakkathayam Law nor Muslim Law.

Mention may be made here of burial grounds as Wakfs.[2] These are attached generally to mosques, especially Jamat mosques, and consequently are under the same management. In some places there are private cemeteries[3] belonging to rich Tarwads, who do not allow any one except the members of their Tarwad or their dependents to be buried in them.

As regards the devolution of religious offices, the usage varies in different places. It may be said as a general rule that in North Malabar, in a majority of cases, the Marumakkathayam rule is observed.

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1. In the words of A. Sabonadiere and V. Fitzgerald. "The Succession to a *thakia* appears to be the ordinary Hindu rule of the succession of the "virtuous approved disciple" (*Satsishya-Chela*) to the *gadi* of a *Mahant*."

2. As regards wakfs, a word may be said as to the various offices that are in different ways connected with them, as for instance, the Mukri and the Khazi. Generally speaking, in every mosque there are two servants or mukris, as they are called, one, a caretaker, and the other, a muezzin or one who calls the devout to prayers. The latter also often officiates as the Imam or leader of the congregation in prayers. The Khazi, in many places, often does the duty of an Imam; but then it is confined to important occasions, as for instance, during the annual festivals of the year. Not infrequently he happens to be also the Mutawalli of the important Mosques of the place. All these are in addition to his other well-known duties. In the case of officials attached to a mosque, they are ordinarily maintained out of the estate of the religious institutions to which they are attached; and similarly as regards other items of expenditure incidental to its upkeep. In some cases the public shoulder the expenses. Again those in the charge of a single Karnavan are usually maintained out of the funds of the Tarwad of which he is the Karnavan.

3. The burial ground attached to the Odathil Jamat mosque at Tellicherry is a case in point. This endowment was founded by Chowakkara Moosa, a well-known merchant of Tellicherry, about the early decades of the 19th century. It is now managed by a board of trustees of four Karnavans, the heads of four Tavazhis of the Chowakkaran Tarwad, known as Orkateri (2) Keloth (3) Valiapura and (4) Pudiapura.

The nephew has always by usage at least some moral claim to be appointed to an office where a vacancy occurs. The mind of the Mopla in North Malabar is so imbued with the principles of Marumakkathayam Law that only when the nephew is found incompetent, the claim of the son of the last incumbent to the office would be enquired into. In this connection, the words of Buchanan[1] (who wrote somewhere about the early nineteenth (century) seem to us to be relevant.—"Mosques are very numerous. In each presides an Imam, or Mulla, appointed by the Tangul.[2] He usually bestows the office on the sister's son, or heir of the person who last enjoyed the office, unless he should happen to be disqualified by ignorance or immorality." In South Malabar, however, the practice at the present day is to appoint the fittest man to the place, a matter left to the discretion of the Mutawallis concerned.

Mopla Mausoleums.

Finally there are the Jarams or mausoleums where holy personages are reported to have been buried. The most important Mopla shrines in Malabar are situated in the following places: (*a*) Ponnani, (*b*) Mambram (*c*) Malappuram and (*d*) Kondotti.[3] To begin with, the Jaram in Ponnani with its copper-sheeted cupola is the object of profound veneration by all the Moplas on the West Coast. Here lies buried Syed Abdur Rahaman Hydross[4], a descendant of the Prophet and the ancestor of Syed Muhammad Hydross, who is at present the Valiajarathingal Thangal of Ponnani and who also claims to be descended from the Prophet in an unbroken line of descent. In the mausoleum are found the graves of the members of the Valiajaram Tarwad of which the Thangal is the Karnavan and there is a mosque near by with an open cemetery attached to it.

Vows are made and religious ceremonies are performed in the mosque and in the Jaram which commands certain inam[5] lands as endowments. Besides there are a few properties belonging to the Valia Jaram Tarwad, the Karanavan of which is always the Trustee or Sajjadanashin of the mausoleum.

Again he has also some Wakf[6] property attached to his office, not to mention the income he derives by way of offerings made by pious devotees to the shrine. It will be observed that the office of the Thangal with all its perquisites devolves according to Marumakka-

1. Buchanan's "Travels" pp. 421 and 422, Vol. II.

2. The reference here is to the Valiajarathingal Thangal of Ponnani in South Malabar.

3. The Jaram at Kondotti is the place where the founder of the family of Kondotti Thangals is buried. It is reputed to have been built about the year 1784 A.D.

4. Syed Abdur Rahman Hydross is reputed to have arrived from Hadramath in South Arabia and to have married a girl from the Uthankanakath Tarwad in Ponnani. As to the probable period of his arrival here nothing definite is known.

5. These Inam properties are in Ponnani, Veliyangode and Pallaparom, all situated in the old Kutnad Division, and in Purathur village, situated in the old Betadnad Division.

6. This is situated in Thottumukkan near Alwaye, and there are some in Moonakkal. There are no landed properties belonging to the Thangal in North Malabar.

thayam rules, although his self-acquired property and that of the other members in his Tarwad descends according to Muslim Law. Further, the Valiajarathingal Thangal is not only a Mutawalli of several mosques and a Karnavan of his Tarwad, but is also the Khazi[1] of many a village scattered about the land, from North Travancore right up to the Calicut Taluk in South Malabar.

The next important Jaram in Malabar is in Mambram, which for our purpose merits only a brief notice. It is here that Syed Hussain Ibn Alabi Jiffri Thangal, the first ancestor of the well-known line of Mambram Thangals reputed to be an Arab, is buried. He is said to have arrived in the early part of the 18th century A. D. The present Thangal, Syed Ahmed Jiffri Atta Coya Thangal, who resides in Calicut, follows Muslim Law regarding his office as in other matters. He is related to the Valiajarathingal Thangal of Ponnani by marriage.

Thirdly, there is the Jaram at Malappuram in the interior of South Malabar. The Shrine and the principal Jamat mosque are close to each other and present a general resemblance to a Hindu temple. Close to it is the residence of the Pukkoya Thangal who is also related to the Valiajarathingal Thangal of Ponnani and claims like him direct descent from the Prophet. Both the Jaram and the Jamat mosque are reputed to have been built three centuries ago. The Thangal, Pukkoya Thangal as he is otherwise called, it will be observed, is the Karnavan of the Ottakath Marumakkathyam Tarwad[2] and is also the Khazi of Malappuram town and the Mutawalli of the principal Jamat mosque of the place as well as of many other similar mosques in the neighbourhood.

It may be said that there are no Jarams or Thakias of any repute in the Laccadive Islands except one in the Island of Androth, where Ubaidulla, reputed to be an Arab saint, is buried. There are indeed a number of mosques which are as a rule built by Tarwads and are therefore managed by their Karnavans. On each island there are only three[3] mosques, which are under the joint management of the public[4] the Khazi and the Amin (or the Chief Government Official of the place). In the Laccadive Islands and in Travancore the Office of the Khazi does not descend according to Marumakkathayam rules; by the practice prevailing there he is elected by the public.[5]

1. The Karnavan of Valiajaram is a person held in great regard and almost always, if not invariably, he is the person appointed or accepted as Khazi in Thottumukkan and Moonakkal. In the former place there is a mosque to which are attached numerous mosques of the neighbourhood and its Khazi is also their Khazi. As Khazi the Thangal collects a certain fee, the pattom as it is called, for his services.

2. S. A. No. 1183 of 1916 (unreported).

3. See "A Short Account of the Laccadive and Minicoy Islands," by R. H. Ellis, I.C.S., p. 16.

4. In Travancore also there are some mosques built and managed by Karnavans of Tarwads but their number is limited. Most of the mosques here at the present day are in the hands of the public.

5. Here it might be noted in the words of A. Sabonadiere and Fitzgerald "that both the hereditary and the elective principle are contrary to Muhammedan law both Shafii and Hanafi. A Qazi *must* be appointed by the head of the State (even non-Moslem, provided at least he is friendly to Islam.)"

SECTION 2

Succession to the Religious Offices

In the light of what is stated in the previous pages let us consider what appears to be an anomaly,—why even the religious offices of the Moplas of North Malabar devolve in accordance with the rule of Marumakkathayam. Before proceeding further let us mention a word about the Makdhum Thangal of Ponnani and the Thangal at Baliapatam. The former resides in Ponnani and is the Karnavan of Pazhiaagam Tarwad and the sole Trustee of the principal Jamat Mosque in the place. His authority is supreme on all matters of doctrine. In the words of a learned writer, "He is descended in the female line from an Arab, named Zein-ud-din who more than 600 years ago is said to have founded the famous Muhammadan College at Ponnani." Hence even at the present day the Makhdum Thangal continues to be the head of the religious college and "confers the title of Musaliyar (*Moulvie or elder*) on Mullas who have qualified themselves to interpret the Koran and the commentaries." As regards the Baliapatam Thangal, although he is the principal religious leader in the Chirakkal taluk, he ranks only second in importance to the Thangals already mentioned. He is the Karnavan of a Tarwad, and as such is the Khazi of Baliapatam, for the office is confined to his family. He is also the chief Khazi of nearly eight villages in the taluk, besides being the president of the boards of trustees of a number of mosques in the town.

Mention may here be made of a few general characteristics which distinguish these Thangals from others. They are, first of all, religious leaders, who as a matter of course command great respect, the more so if it is remembered that Malabar is a country where religious orthodoxy reigns supreme. Secondly, they all belong to old Marumakkathayam families except a few like the Mambram and Kondotti Thangals, who are of recent origin. Thirdly, they are usually Karnavans of the Tarwads to which they belong. Fourthly, they are generally, though not invariably, trustees of well-known shrines or mosques. Lastly, they are often also the Khazis of the place in which they live and like the Valiajarathingal Thangal of Ponnani, they are frequently found to be in charge of the office of the Khazi over villages and towns scattered over miles around.

Let us consider briefly why even the religious offices of the Moplas descend according to Marumakkathayam rules. Firstly, because this peculiar system is one of the most stable of all possible arrangements that could be made for the conservation of office or property and particularly in the case of Wakfs like mosques and mausoleums nothing better could be thought of than to constitute the Karnavan of a Tarwad, the trustee. Secondly, there is one feature peculiar to the Thangals which may be mentioned here. It is customary among them to marry the girls in their Tarwad only to Syeds or men claiming descent from the Prophet, while the men are not particular in this respect. Hence, the descendants of the sisters of a

Mopla Thangal are bound to be purer in blood[1] than the issue of the male members. Therefore in choosing a trustee for a religious office, especially one of special religious sanctity, it is but natural to appoint a person descended from a female in the Marumakkathayam way. For it is only thus the purity and sanctity of the religious office could be maintained throughout.

To this may be added the general custom prevailing in Malabar of the existence of Melkkoyma rights in the ruling sovereigns as will be evident from the subsequent pages. In exercising this right it is but reasonable to conclude that a king, like the Zamorin of Calicut, will look to the Karnavan of the Tarwad of the locality most famous for its sanctity and purity; and it is hardly necessary to mention that the more important the religious office, the more rigidly this rule is likely to have been adhered to. Again, taking Valiajaram of Ponnani as the type, the real owner of the Mausoleum is the Valiajaram Tarwad, and its trustee is always its Karnavan. In other words, the Valiajarathingal Thangal is the custodian of the Valiajaram and its emoluments, because he happens to be the Karnavan of the Tarwad. Hence it is not difficult to understand why the succession to such religious offices is in accordance with Marumakkathayam rules.

SECTION 3.

The Melkkoyma Rights.

In a study of the Muslim religious institutions of Malabar, the Melkkoyma[2] right of its ancient kings deserves a detailed consideration.[3] The Melkkoyma is the right which the Hindu Rajas of old possessed over all the religious endowments in their territory as active superintending trustees. In the words of Mr. Justice Muthuswamy Iyer and Mr. Justice Parker, the Melkkoyma was "not limited to a passive supervision in the sense in which we now understand the sovereign right of control but that it extended to active participation in management in the capacity of its superior and superintending trustee. Having again regard to the spirit in which Hindu sovereigns identified themselves with important temples in

1. In the words of A. Sabonadiere and V. Fitzgerald: This, "might be further illustrated by reference to the Muhammadan doctrine of "*Kifa' at*" which allows *mes alliances* for men but not for women. Thus two apparently contradictory systems of law, the Muhammadan and the Marumakkathayam, conspire to produce the same result."

2. Melkkoyma, "From Dravidian 'Mel' above and, 'komma' or 'koyma' Royal authority."

Note.—"Melkkoyma was the right the sovereign power possessed over property of which the ownership was in others. Malabar Rajas not now being sovereigns have no longer Melkkoyma rights."—N.D.C. 118, (1861). See Mr Graeme's Glossary of Malayalam words and phrases. (1882).

3. Here we may observe that excepting Wigram in his book on Malabar Law and Custom, no writer of repute of whom we are aware makes a direct reference to the fact of the existence of Melkkoyma right in the hands of the ancient Kings of Malabar with reference to Muslim religious endowments. And even he has no better authority to put forward in support of his opinion than the bare admission of the people in the country. See Wigram and Moore's Malabar Law and Custom, p. 360. (1905).

their territory, and to the mode in which the British Government itself exercised superintendence over Hindu temples on this side of the Ghat under Regulation VII of 1817 prior to its withdrawal from direct interference in the management of the religious institutions, and to the establishment of Devasthanam amins, Peishkars, and monegars, organised for the purpose of exercising supervision and control with efficiency, we do not think it is too much to say that when the ruler of the country was also a superintending trustee he appointed agents and *samudayees* and acted practically as a trustee having superior position in relation to the local uralars."[1]

The Melkkoyma was not peculiar to the kings of Malabar[2] nor was it exercised in favour of Hindu temples only. Even outside the district, the Rajas of ancient India[3] exercised it as part of their sovereign right to protect all religious and charitable endowments within their territory. There is some authority[4] to show that it was exercised not exclusively in favour of Hindu religious endowments, but that the jurisdiction of the kings[5] extended to churches and mosques as well. It is said of the Rajas of Madura that they occasionally interfered in the management of the churches. Similarly in Malabar, to quote Wigram and Moore, "the general superintendence of all the endowments is vested in the Sovereign and is termed Melkoyima. When the sovereign power of Malabar Rajahs ceased to exist the Melkkoyma was allowed to fall into abeyance." Again, Wigram describes it on another occasion as "the right which Hindu and Muhammadan alike admit, of the ruling power to interfere in the case of disputes and fraudulent practices occurring,"[6] in the administration of the religious endowments.

If we consider at some length, the political, economic, religious and social history of Malabar and its institutions, it would appear that the Melkkoyma was originally exercised by its ancient kings over the religious and charitable endowments of the Muslims as well and only by accepting that fact a reasonable solution is possible for the existence at the present day of some of the Hindu practices and usages among the Moplas.

It has been pointed out in an earlier chapter that, speaking ethnologically, the Moplas are mainly converted Hindus, comprised of the different castes, from the degraded Cheruman to the Brahmin —the elite of the aristocracy; and that the majority are mainly recruited from the lower ranks of society and are of recent origin and their physiognomy is a clear index of the stock from which they

1. Appeal No. 35 of 1887 (unreported) referred to in "Malabar Law", by Sundaram Iyer, p. 267.

2. "Malabar Law," by Sundara Iyer, p. 266.

3. "Malabar Law" by Sundara Iyer, p. 265 and" Hindu and Muhammadan Religious Endowments" by P. R. Ganapathy Iyer, pp. 28-26 (1918).

4. "A Manual of Malabar Law" by Ramachandra Iyer, p. 58 (1883) and "A Handbook of Malabar Law and Usage" by B. Govinda Nambiyar, p. 55 (1899).

5. In the words of A. Sabonadiere and V. Fitzgerald "No doubt.....Melkkoyma is of Hindu origin; but the Sultan's right of superintendence over *waqf* is not altogether unlike it."

6. Wigram and Moore's Malabar Law and Custom p. 360 (1905) in A.S. No. 501 of 1876. (South Malabar).

have sprung. Mention has also been made of those "often extremely fair with fine features sometimes of a distinctly Semitic type" who belong to old families of high social position. Now it is with the latter, particularly with their early history, we are for the present concerned.

Without covering the same ground as has been done already, let us make a very brief reference to the early history of the Moplas so far as it is necessary for our purpose. To begin with, the Arabs had settled in Malabar some time during the early Middle Ages (roughly about the latter part of the ninth century A.D.) and from all that we know of the Arab-Mopla colonies, if they may be so called, the following may be mentioned as their chief characteristics. The Arab-Moplas were chiefly merchants who came to Malabar mostly without their women and they were received hospitably by the sovereigns of Malabar, particularly by the Zamorin of Calicut in the South and the Kolattiri Raja of Chirakkal in the North. As this aspect of their social history has a far deeper significance that at first meets the eye, let us deal with it in all its phases. Firstly, these Rajas were so solicitous to curry their favour, that they often went out of their way to make them live within their domains in comfort. They supplied them with a number of Nayar servants, and it is said that they even went so far as to help them to enter into marital relations[1] with the women of the country. There is more than one authority in support of this latter tradition. For example, it is alleged[2] that a whole village occupied by Nambudri Brahmins was vacated by the order of the Zamorin of Calicut and was given over to the Mopla-Arabs; and further on another occasion it is alleged that he assigned them a few villages[3] for their abode and gave up to them the families of the former residents not excepting even Brahmins.

Secondly, these Rajas treated the Arab-Moplas socially with great respect, more or less, as their equals. For this there is ample evidence.[4]

Thirdly, the Arab-Moplas were regarded by the Hindus in Malabar as professing a religion not far removed from their own and to belong to a caste allied to theirs. Thus they were said to profess the Fourth Vedam, considered to be "the last of the four religions in accordance with the Atharvana Veda,"[5] and were supposed to be of the fifth caste or Anjuwarnam.[6] There was also a

1. South Indian Mussalmans by Qadir Hussain Khan, Page 19, Foot-note (1910).

2. 'Malabar Moplas' in Malayalam by Dewan Bahadur C. Gopalan Nair (p. 96) (1917) (out of print).

3. A Gazetteer of Southern India by Pharoah & Co. page 518 (1855).

4. (*a*) Malabar Moplas in Malayalam by C. Gopalan Nair, p. 96.
(*b*) South Indian Mussalmans by Qadir Hussain Khan, p. 19 (1910).
(*c*) See also Census of India, Vol. XXVI, Travancore, Part I, Report, p. 105, para 83.

5. 'The Mopla-Nad' by G. Tokinam, p. 5 (1924) (out of print).

6. A History of Travancore by P. Shungoony Menon, (out of print), at p. 47 (1878) (a rare book available at the Trivandrum Public Library and lent to us by the kind courtesy of the Curator)

belief in certain quarters that these Arab-Moplas were either Jains or Buddhists.[1] Now it will be remembered that in Malabar there were only two castes among the Hindus, the Brahmins and the Nayars or the Kshatriyas, the Vysia and the Sudra castes being merged into the Nayar caste in general. The latter was again sub-divided into several sub-castes corresponding to the three divisions stated above, and it is well-known that the higher class of Nayars were mainly warriors something like the knights of the Middle Ages in Europe. Similarly, the Mopla-Arabs were merchants, who in the time of war took to the sword. Hence in a land where caste distinctions were inextricably woven with the 'professions' there is no wonder that the Moplas, the Syrian Christians, and the Jews of the West Coast were all regarded as belonging to the nobler races of Malabar.

Fourthly, there is this further fact supported by some authority, that the Arab-Moplas married the women of the country among "the local land-owning classes, and adopted the prevailing rule of inheritance in deference to their foreign wives."[2] In this connection it may be pointed out that originally the lands in Malabar belonged exclusively either to the Hindu pagodas or to joint families consisting of either Brahmin Illoms or Nayar Tarwads.[3] They were seldom owned individually.

Fifthly, it therefore follows that the Arab-Moplas in the early years of their history married among the upper ten—the land-owning Marumakkathayam Hindu Nayar families, whose members they converted *en masse* to the Muslim faith and themselves adopted the system of matriarchy. For, it will be observed, no Muslim would marry a Hindu girl without first converting her to the Muslim faith. As in the Malay Archipelago so in Malabar, it may be said of the Arabs "they had only to present themselves in the midst of a pagan people to espouse the daughters of kings or the upper aristocracy."

Sixthly, there is this further fact which throws considerable light on the subject under discussion, The nature of the Nayar Society[4] itself was not what it is to-day in important respects in the period we are considering. Again, even at the present day, the Hinduism prevailing in Malabar is not, it is said, exactly what it is on the other side of the ghats. In the words of Fawcett which are worth quoting, "There is much more of the extremes of religious belief to be seen amongst the Nayars than amongst any other people or caste of Southern India."

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1. Francis Day, Land of the Perumals, p. 365 (1863).

2. (*a*) The Asiatic Review, N. S. Vol, XX. No. 62, April 1924, p. 314.
   (*b*) Tellicherry Factory Records. No. 11. 8th March 1793. Question 16.

3. See Extract from "Malabar und die Missionstation Talatscheri" by Christian Irion. (Printed at Basel, 1864) referred to in Malabar Marriage Commission Report, Appendix I. See also Appeal Suit No. 213 of 1856. Dist. Court, Tellicherry (Zillah Decision).

4. (*a*) It will be observed the Nayars of to-day are not the exact prototypes of their progenitors. See F. Fawcett "Nayars of Malabar" pp. 195 and 254 (Madras Government Museum), Bulletin, Vol. III. No. 3 (1901).

   (*b*) See also Voyage to the East Indies by Fra Paolino Da San Bartolomeo. Translated by William Johnston. (1800) pp. 185-186.

"It has been noticed already how that the Malayalis have, practically, no sects such as obtain throughout the rest of Southern India. Vishnu, Siva, Bhagavathi, Rama—all these names of the Hindu theogony are meaningelss to them. They do not know one from the other except in name. Their Hinduism is not that of the rest of Southern India."[1] Another learned writer speaking about Hinduism prevailing on the other side of the Ghats during the years 650-950 A.D., remarks that it was "evidently at a great discount in Kerala during that period."[2]

And so, what with the looseness of religious belife of the Nayars on the one hand and the tolerant attitude of the early Muslim religious missionaries on the other, it becomes evident that insuperable obstacles are not likely to have been in the way originally against the-Arab-Moplas marrying in Nayar Tarwads and converting them. It is only later on after the passing of centuries that the Nayars gradually become exclusive, the more so because (particularly during the sixteenth century and after) the status of Moplas themselves began to sink in the eyes of the Nayars when, it will be remembered, the practice largely began of enlisting Mukkuvans and other low castes, the scum of society in Malabar, into the Muslim faith.

Our next proposition is that when these Nayar Tarwads (not infrequently all the Tarwads in a village) became Muslim *en bloc*, the temples generally attached to rich houses or existing in the villages, were converted into mosques as a natural consequence of the faith they adopted, and that, when they constructed new mosques, they followed the model of the temple architecture of which alone they were familiar, and which were so admirably suited to the peculiar climatic and other conditions prevailing in the country. For this purpose let us go into some detail as to the construction of mosques in Malabar.

It has been mentioned elsewhere that the great number of Mopla mosques scattered all over Malabar greatly resemble temples in architectural details and that almost all of them are built in the uniform plan of a Hindu temple. The mosque at Madayi or Palayangadi in North Malabar is a case in point; it is one of the oldest mosques in the district, and is reputed to have been built in the year 1124 A.D. by Malik-Din, one of the earliest Muslim missionaries in Malabar. This is a rectangular building situated in the midst of a quadrangle, and has a low pyramidal roof, which is thatched. At one end of the quadrangle there is a small building—a Mausoleum; and, besides, there is a well and also an out-house, which was formerly built to lodge the trustee of the mosque. In short, it is an old picturesque mosque very much like a temple. Similarly as regards the bigger mosques built with 'copper sheeted cupolas' ' and gilt knobs,' as in Malappuram and Ponnani, the resemblance to Hindu temples is much indeed. To quote Logan, the author of the Malabar Manual, "how the Muhammadans came to abopt the same style for their mos-

1. Nayars of Malabar by F. Fawcett, p. 255. Bulletin, Vol. III, No. 3 Madras Government Museum (1901).

2. Tamil Studies by M. Srinivasa Iyengar, M.A. First Series, (1914) page 373.

ques is perhaps to be accounted for by the tradition, which asserts that some at least of the nine original mosques were built on the sites of temples, and that the temple endowments in land were made over with the temples for the maintenance of the mosques. Before Muhammadanism became a power in the land it is not difficult to suppose that the temples themselves thus transferred were at first used for the new worship, and this may have set the fashion which has come down to the present day. So faithfully is the Hindu temple copied that the Hindu Trisul (or trident) is not unfrequently still placed over the open gable front of the mosque.[1]"

So far, it will be observed, an attempt has been made to point out, firstly, that the Arab-Moplas during the early Middle Ages were mainly converts to Islam from Nayar Tarwards; secondly, that the Mopla mosques during the same period consisted of either Tarward temples or of those built after the model of Hindu pagodas; thirdly, that the border line between the Hindu and Muslim religions at the time under consideration was often very thin, the Arab-Moplas being even regarded as belonging to one among the Hindu castes. In other words, they were treated as Hindu-Muslims and their mosques, identical in almost all respects to the temples, were considered as temple-mosques, if we may use the expression. Now the theory of Melkkoyma is easily explained. The Nayar Rajas had the Melkkoyma right over temples and similarly over mosques, for the Muslims in

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1. (*a*) See Logan's Malabar Manual, p. 188 (1906) and also the foot-note on the same page.

(*b*) The reasons why the mosques were built after the model of pagodas are various and are worth enquiring into. For our present purpose, it is enough to mention briefly two or three special features of mosque-construction in Malabar. Firstly, it must be mentioned that the architecture of Malabar temples is best suited to the climatic conditions of Malabar with its incessant and heavy rains during the monsoons; and the low pyramidal roofs are hence a necessity. The same reason may be ascribed for the fact that no portion of the main structure of the mosque is left open either on the sides or on the top; and a portion of the out-house surrounding the mosque is also often roofed, so that from the time the devotee enters the mosque to the time he leaves it, he is entirely protected from the inclemencies of the weather. Secondly, the ancient architects of Malabar, as well as the persons who first endowed these mosques, were familiar only with the construction of temples and did not know of any other plan for building mosques; and the fact that Malabar was from the earliest times cut off from the rest of India by mountains, on the one side, and the sea, on the other, explains to some extent the peculiarity of Malabar architecture, "for Malabar, is as unlike the rest of the Presidency as Burma." Add to this the fact that Malabar was never under a Muslim Government except for a couple of decades during the Mysorean conquest, and the reason for the Malabar mosques being like temples becomes clear. Thirdly, the innate conservative nature of the people in Malabar, be they Moplas or Nayars, should also be taken into account in providing a clue to the fact, that though the West Coast has been brought into closer contact with the rest of India in modern times, yet they still cling to their age-long customs and usages with a great pertinacity in all matters, whether religious, legal or social. The passing of centiures has affected them but a little. In the words of the author of Nayars of Malabar: "The times have changed things a little; a little only because after all the change is on the surface". The point that needs to be emphasised here is that though the Moplas are well acquainted with the architecture of the mosques outside their country, all the same they still persist in building new mosques after the model of the old with which they are so familiar from the infancy of their race. After all the requirements for a Muslim place of worship are themselves so few, that any simple structure, for the matter of that any building, could be easily converted into a mosque.

Malabar were regarded by the Hindus not in an exclusive way but as one among themselves. Hence what applied to the Hindus *ipso facto* applied to the Muslim converts as well. This conclusion is irresistible, and there is neither reason nor authority to warrant any other inference.

There is another circumstance in the history of Malabar, which points to the existence of the Melkkoyma right in the hands of the Rajas of the country. In North Malabar there is the ancient Marumakkathayam Mopla family of the Ali Raja of Cannanore[1] to whom reference has been made elsewhere. Now there are two features connected with his family which throw some light on the theory of Melkkoyma. One is that at the parsent day he is the sole Mutawalli of all the mosques in Cannanore, and the second is he is the chief trustee of the mosque at Madayi,[2] some thirty miles away up north right in the heart of the old Kolattri Raja's dominions, while in the principal mosques at Baliapatam, only three miles distant, he finds no place in the board of management.

There are two alternative ways by which these facts could be explained. Firstly, the Kolattiri Rajas in the exercise of their Melkkoyma rights, either appointed the ancestors of the Ali Raja as the sole Karnavan—Mutawallis of all mosques in Cannanore (which was formerly their capital), or gave lands only to this family for the purpose of erecting mosques and made them sole trustees of all the mosques in the place, and similarly the Ali Rajas were appointed as the chief trustees of the mosque at Palayangadi, one of the oldest and important mosques in all their Kingdom. Secondly, the Ali Rajas made themselves the sole trustees of all the principal mosques in the town, and in the same way constituted themselves the chief trustees of the mosque at Madayi during the century when they were semi-independent chieftains and particularly during the regime of the King of Mysore, when the whole of the Chirakkal taluk was under their immediate command and control.

Taking the second alternative first, there are two or three insuperable difficulties in the way of accepting it. First of all, it does not explan why the Ali Rajas continued to be the trustees of the Mosque at Palayangadi even after the year 1784 A.D., when they had not even the shadow of a right over the Chirakkal Taluk, for they were deprived of their possessions by the order of Tippu. Further, in North Malabar at the present day the Ali Rajas are the trustees of no other mosques than those already mentioned—the one

1. See Logan's Malabar Manual, pp. 347-348; 361-363; 448, footnote; and 452 (1906).

2. The mosque at Madayi or Palayangadi in Chirakkal taluk, close to one of the palaces of the Kolattiri Rajas, has some endowment of lands out of which it is maintained. It is managed by a board of five trustees who all succeed in the Marumakkathayam way. The Ali Raja of Cannanore is the President of the Board and the Khazi of the place, who is a Thangal, is also one of the Trustees. Referring to this mosque Logan remarks: "It will be seen that the Muhammadan story about the introduction of Islam into Malabar renders it probable that the last of the Perumals had sufficient influence over the North Kolattiri to induce him to grant a site for a mosque at Madayi and to endow the institution."

at Madayi and those at Cannanore. If this alternative were correct, it ought to explain why the Ali Rajas did not constitute themselves trustees of at least the principal mosques situated in the land temporarily in their charge; while in fact they have no rights even over the mosques situated in the neighbouring town of Baliapatam, which is a town mostly inhabited by the Moplas. Again, the system of Karnavan-managed mosques so widely pervalent in Malabar is, as mentioned before, one of the most stable[1] of all arrangements that could be thought of. The heads of the Tarwads continued hereditarily to manage the mosques of which they were the Mutawallis so long as the Tarwad lasted, and the sovereigns, who exercised Melkkoyma rights, rarely interfered with their management so long as the Karnavans were not guilty of any gross act of neglect or misfeasance with reference to the trusts. The rule was "Once a trustee, always a trustee." Hence, it is not easy to understand how the Ali Rajas could be Mutawallis of all the mosques at Cannanore and of the one at Madayi, if they were not so from time immemorial. For, it will be observed, Malabar in the old times was divided among feudal chieftains, and the administration of the country was largely local in the hands of the "*Panchayat,*" and the native Rajas could not do things arbitrarily over-riding the customs and usages of the people.[2]

Our hypothesis offers in this respect an easy and a reasonable solution. The Kolattiri Rajas appointed the ancestors of the Ali Raja of Cannanore to be the trustee of the mosque at Madayi and Cannanore, because as the sovereigns of North Malabar they had the Melkkoyma rights, which they exercised in favour of their own trusted prime ministers, especially if it is remembered that lands on which the mosques were built belonged to them.[3] Further, there is some coincidence between the period, when the mosque at Madayi is reputed to have been built and the time when the ancestors of the Ali Raja are said to have embraced Islam, which suggests the inference we are urging. It was built about the year 1124 A. D. (if the inscription in the mosque is to be believed) just about a quarter of a century after the conversion of the forefathers of the Ali Raja to the Muslim faith. These were the very persons, who are likely to be appointed as the principal trustees of such a famous mosque as the one under consideration. Finally, there is the statement of Ibn Batuta,[4] the well-known traveller, who visited this part of the world about the middle of the fourteenth century A. D., with reference to the mosque in the city of Hili, identified by Logan as Madayi or Palayangadi, that large offerings are made to it both by Hindus and Muslims and that a principal Muslim was in charge of

1. See the article in the Imperial and Asiatic Quarterly Review. 1897, 3rd series. Vol. IV, p. 295 by F. Fawcett.

2. Malabar and its Folk by T. K. Gopal Panikkar, p. 259 (third edition).

3. As regards Cannanore, it was their capital town and as for Madayi, it was one of their principal stations in North Malabar. In this connection we may also point out here that all the lands in the town of Cannanore still belong to the Ali Raja.

4. See Ibn Batuta; "Travels"; p. 170.

the treasury. Thie fits in well with the theory we have put forward, that the Ali Raja, being the prime minister and the high admiral of North Malabar, is likely to be the 'principal Mussalman' referred to by him and the right person to be in charge of ite finances.

CONCLUSION.

In spite of the general prevalence of Marumakkathayam Law among the Moplas of North Malabar, there does not appear to be, strange as it may seem, a general presumption of law to that effect. The British Courts do indeed regard this prevalence as one of the factors to be taken into account in their decisions, where the parties are Muslims from North Malabar. It will be seen from the preceding pages that even more than the Muslims in the Punjab, the Moplas of North Malabar are governed by custom, and yet, while in the Punjab, the presumption ie in favour of the customary law of the country, in Malabar there is no such presumption.

An attempt has been made to show in the previous pages with reference to the origin, history and law of Moplas, how the law that they are governed by at the present day has a long story behind it, and that there is a principle observable in its evolution. The law of the Moplas is not a mere code of rules adopted by chance by a community which has nothing better to look to, but is the result of circumstances, of historical and other phenomena, which are in the long run the deciding factors in all such cases.

In the course of these pages I may have given expression to ideas which to an orthodox Muslim may appear to border on heterodoxy. It can only be said that the spread of Islam in the past is itself due to the adaptability of the ancient Muslim institutions and particularly to the broadmindedness and tolerance of the early preachers of Islam. "Islam stripped of its theology, is a perfectly simple religion. Its cardinal principle is belief in one God and belief in Muhammad ae his Apostle. The rest is mere accretion, superfluity. The Qur'an, rightly understood and interpreted, is a spiritual guide, containing counsels and putting forward ideals to be followed by the faithful, rather than a *corpus juris civilis* to be accepted for all time. It was never the intention of the Prophet, and no enlightened Muslim believes that it ever was, to lay down immutable rules or to set up a system of law which wae to be binding upon humanity apart from considerations of time and place and the growing neceesities arising from changed conditions. The Prophet always emphatically asserted that he was a man of like passions with others, except that he was entrusted with a revelation."

"True, for the purposes of order, of security, and the preservation and maintenance of the new society created by Islam, he laid down rules regulating marriage, inheritance and so forth, but these rules were mostly of a very elementary character, and were intended to meet the existing condition of things. The position of Muhammad, indeed, was that of a spiritual teacher, a Prophet, and not that of a legislator."

The Moplas of North Malabar are orthodox adherents of the religion of the Prophet Muhammad, but all the same their personal law to an appreciable extent forms no part of the law laid down by him. At the same time, many of them would be willing to adopt the law of their religion, and their course is set towards Muslim Law. Conditions in modern Malabar have also considerably changed from the past, and even the Nairs, the chief representatives of Marumakkathayam, show signs of revolt enabling them to escape from the trammels of a system which belongs to the old order. It is not surprising to find the Moplas making an effort to free themselves from the old-world Marumakkathayam Law.

The Liberty Press, Madras.

APPENDIX

A very important change has been recently brought about in the customary Law of the Muslims in India by the passing of the Muslim Personal Law (*Shariat*) Application Act, XXVI of 1937. This enactment which came into force on the 7th of October 1937 lays down the following rule regarding the law to be adopted as the basis of decision in cases where the parties are Muslims.

1. "Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including *talaq, ila, zihar, lian, khula* and *mubaraat*, maintenance, dower, guardianship, gifts, trusts, and trust properties, and *wakfs* (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (*Shariat*)."

2. (1) Any person who satisfies the prescribed authority—

(*a*) that he is a Muslim, and

(*b*) that he is competent to contract within the meaning of S. 11 of the Indian Contract Act, 1872, and

(*c*) that he is a resident of British India, may, by declaration in the prescribed form and filed before the prescribed authority, declare that he desires to obtain the benefit of this Act, and thereafter the provisions of S. 1 shall apply to the declarant and all his minor children and their descendants as if in addition to the matters enumerated therein, adoption, wills and legacies were also specified.

(2) Where the prescribed authority refuses to accept a declaration under sub-s. (1), the person desiring to make the same may appeal to such officer as the Provincial Government may, by general or special order, appoint in this behalf, and such officer may, if he is satisfied that the appellant is entitled to make the declaration, order the prescribed authority to accept the same.

3. (1) The Provincial Government may make rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :—

(*a*) for prescribing the authority before whom and the form in which declarations under this Act shall be made ;

(*b*) for prescribing the fees to be paid for the filing of declarations and for the attendance at private residences of any person in the discharge of his duties under this Act; and for prescribing the times at which such fees shall be payable and the manner in which they shall be levied.

(3) Rules made under the provisions of this section shall be published in the Official Gazette and shall thereupon have effect as if enacted in this Act.

4. The District Judge may, on petition made by a Muslim married woman, dissolve a marriage on any ground recognised by Muslim Personal Law (*Shariat*).

5. Provisions of the Acts and Regulations mentioned below shall be repealed in so far as they are inconsistent with the provisions of this Act, namely :—

(1) S. 26 of the Bombay Regulation, IV of 1827;

(2) S. 16 of the Madras Civil Courts Act, 1873;

(3) S. 37 of the Bengal, Agra and Assam Civil Courts Act, 1887;

(4) S. 3 of the Oudh Laws Act, 1876;

(5) S. 5 of the Punjab Laws Act, 1872;

(6) S. 5 of the Central Provinces Laws Act, 1875; and

(7) S. 4 of the Ajmere Laws Regulation, 1877.

*GLOSSARY

Aliyasantana :	*lit.* Inheritance in the line of nephews.
Anandiravan :	Junior member of Malabar tarwad.
Attaladakom :	*lit.* Attal-extinction ; Adakkam-taking ; Remote heir in the absence of the tarwad.
Ejaman :	Canarese equivalent of Karnavan.
Harta pencharian ;	Self-acquired property.
Hennumula :	Property of females (Kan), prevalent among Moplas—Aliyasantana—See Stri Sothu.
Illoms of Nambudiris :	these correspond to Tarwads among Nayars.
Kamanakan :	Sister's children.
Karnavan :	Eldest male member and the manager of the tarwad.
Keippanom or Kasipanom :	Property given on marriage among the Moplas returnable on the termination of the marriage to widow or children if she is dead ; to tarwad in the absence of both.
Kovilagom or Kottaram :	Palace or dwelling place of Royal families in Malabar.
Mamak :	The maternal uncle.
Marumakkathayam :	System of inheritance through nephews and nieces.
Melchilavu :	Pocket expenses allowed to junior members.
Melkkoyama :	Right of superintendence over mosques or temples vested in the sovereign.
Misra vazhi	Mixed part ; Rule of inheritance among Ezhavas of South Travancore in respect of self acquisition which is a combination of Makkathayam and Marumakkathayam.

*[This has been prepared mainly with the aid of "Malabar and Aliyasantana Law" by P. R. Sundaram Iyer.]

Mopla :	Muslims of Malabar and Kanara speaking Malayalam.
Nambudiri :	The indigenous Malabar Brahmin.
Nankudama :	The property or inheritance of a woman.
Putravakasom :	Gift by father to wife and children.
Sambandhom :	Generic term for Malabar marriage.
Samudayi :	Manager of the Devaswom.
Stanom :	Status and attendant property of the senior Rajas.
Stridhanam :	Gift among Moplas at the time of the marriage.
Stri Sothu :	(Woman's property) property to be held by females only.
Tamburatti :	The senior lady in a kovilagom.
Tangal :	Mopla priest.
Tarwad :	A joint undivided Marumakkathayam family.
Tavazhi :	A branch of the family being descendants of the same mother.
Uralan :	(Ur : village, Alen : person) Trustee of a temple.
Valiajaram :	A big mausoleum.

GENERAL INDEX

M